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On the Cover

The California National Historic Trail, part of the National Trails System, runs through the City of Rocks National Reserve in southeastern Idaho. The U.S. Supreme Court’s decision last year in Cowpasture River Preservation Association v. U.S. Forest Service addressed the National Trails System Act with implications for the administration and agency jurisdiction of National Trails System segments traversing federal land areas in Idaho [as discussed in this issue’s Featured Article]. Photo credit: Murray Feldman.

Featured Article

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Murray D. Feldman

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Welcome to the March/April issue of The Advocate! With spring right around the corner (and hopefully springtime weather to match!), it is fitting that this issue is sponsored by the Environment & Natural Resources Law Section. Topics in this issue range from important United States Supreme Court case implications in Idaho to recent changes in NEPA regulations.

This issue’s featured article, written by Murray Feldman, discusses *U.S. Forest Service v. Cowpasture River Preservation Association* and how this case applies to federal lands management in Idaho. Next, author Norm Semanko equates the back and forth surrounding the Clean Water Act to a friendly game of ping-pong. Julia Thrower then writes about land use determinations, environmental harm, and access to judicial review by way of the Local Land Use Planning Act. In the final sponsored article, Dylan Lawrence briefly reviews the recent changes to the National Environmental Policy Act Regulations with a nod to the possibility of additional changes from the current administration.

In an additional article, co-authoring team Samuel Parry and Randall Peterman warn the unwary about potential traps lying in livestock leases in Idaho. Next, Chief Justice Bevan writes with transparency on how the pandemic has affected Court processes and functions throughout Idaho in the past year. Finally, our Program and Legal Education Director, Teresa Baker, invites our members to participate in this year’s Lawyer Well Being Week as we seek to improve the state of both physical and mental health in the profession.

We hope you find this issue to be a fresh step into springtime with several thought provoking articles! Enjoy!
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Commissioner’s Message

Two R’s

Laird B. Stone
Idaho State Bar Commissioner
Third and Fifth Districts

In the current civil discourse we hear the word “rights” or words “my rights” in every conversation, social media, and news broadcasts. That word, or words, create an incomplete sentence. Such a sentence or statement is complete when the words “and responsibility” are added after the word “right.” Rights is defined in the Random House Dictionary the English Language College Edition as follows: “That which is morally, legally, or ethically proper.”

Responsible: “Answerable or accountable as for something within one’s power or control.” Those two Rs go together. One does not exist or have any real meaning without the other.

Speaking about or acting to exercise the right effectively and properly cannot be done without being held accountable (responsible) for that which is said or done or is the result of the exercise of that right.

As lawyers we adhere to the Idaho Rules of Professional Conduct. By being sworn in we have agreed to follow those rules. It is a “right” to choose what profession we follow in life. When we joined this profession we accepted, as stated in the IRPC Preamble, the “special responsibility for the quality of justice.”

The Preamble in its several sections places the responsibility upon the legal profession to provide an example to others and to actively participate in furthering the public’s understanding of the rules of law and the justice system in order to protect our constitutional democracy. This is the responsibility portion of our right as granted to us by our education and license to practice law.

So, in our current climate of “debate” and “action” that we see in the news and in person, what do we do? We need, by our example, to remind the people around us as well as our own communities that the act of being accountable (responsible) for our actions is the recognition of our “right” to take or exercise that action. Reasonable responsibility of our actions is the recognition of the full ownership of our power (the exercise of our rights).

James Madison stated this clearly in The Federalist No. 63: “Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effective, must relate to the operation of that power.”

The exercise of full intercourse and communication about the first R (right or rights) must be followed by the second R (responsible or responsibility). By our acceptance of the “right” to choose the profession of law, it is our “responsibility” to add the second “R” to the discussion and to help educate, by word and by example,
the necessity to accept responsibility and the consequences of our actions in the exercise of those rights given to us, both natural rights and those that are given to us by the Constitution and other laws of the nation and of the state.

It becomes far too easy to avoid that interchange and fall under peer pressure which weakens our sense of responsibility, and as St. Augustine noted in his Meditations upon the vandalism of his youth, "All because we are ashamed or hold back when others say 'come on' let's do it!" Even if because of peer pressure or the mentality engendered by a crowd, the sense of responsibility is weakened, it does "not weaken the fact of responsibility." As Dean Don Burnett frequently states, "The law is a higher calling, and we have the responsibility to follow and encourage the rule of law in our society." Thus, our responsibility as lawyers is to speak up, not just in the times of disquiet and unrest, but in peaceful times as well to ensure that the two "R's" of our democracy are used and respected. To forget one or the other is not an option and is a dereliction of the duties that we have assumed and acknowledged.

Where does that put us as lawyers? Abraham Lincoln said it the best when he said, "I do the very best I know how; the very best I can; and I mean to keep doing so until the end. If the end brings me out alright, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference." So, we do the best we can and treat each other with the respect that is due when we properly exercise our rights and accept the responsibility of the consequence of the exercise of those rights.

COVID-19 caused a wide spectrum of reaction from good to bad, loud to silence, rejection to acceptance, and many more descriptive actions. Where you stand or stood on that spectrum of reaction is your right to choose, but it is also done with the acceptance of the responsibility of that exercise of choice – which obviously means the acceptance of the consequences of your act.

Even with all the issues from last year, there have been many bright spots, acts of charity, and, yes, even new opportunities in education and employment. The future really is bright before us and is ours for the building and enjoyment.

It is our right to look forward to that future and our responsibility to make it better for ourselves and the generations that follow.

Endnotes
1. Paragraph 17, Page 1136.
2. Paragraph 1, Page 1125.
5. Confessions, St. Augustine.
6. See Book of Virtues.
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IDAHO LAW FOUNDATION

2020 Year in Review

Diane K. Minnich
Executive Director, Idaho State Bar

The Idaho Law Foundation (ILF or Foundation) is your foundation; members of the Idaho State Bar are also members of the Foundation. The Foundation’s programs include the Idaho Volunteer Lawyers Program, Law Related Education, IOLTA, and Continuing Legal Education. In 2020, through change and creativity, the ILF programs continued to provide needed services and programs to Idaho citizens.

Idaho Volunteer Lawyers Program (IVLP)

IVLP provides a safety net for low-income individual and families who cannot afford to pay for legal services. Hundreds of volunteer attorneys offered pro bono services to those in need. In 2020, the need for IVLP’s services increased, specifically in housing and domestic violence related legal issues.

IVLP provided services by establishing phone clinics, providing a CLE program on evictions, providing estate planning legal services to first responders, and continuing to recruit lawyers to take pro bono cases. In 2020, attorneys donated 5,610 hours to cases and 70 hours to clinics/other activities and services – the value of the donated hours was $1,136,000.

Law Related Education (LRE)

LRE provides students and educators with tools to reinforce civic education, while helping build positive relationships between learners and members of the Idaho legal community. LRE programs include the High School Mock Trial Competition, Law Day Podcast Contest, 18 in Idaho publication, and providing resources to teachers, students, lawyers, and judges.

The 2020 Mock Trial Competition was cut short due to COVID-19. The final rounds, scheduled in March 2020, were cancelled. In late 2020, the Mock Trial committee and staff instituted a virtual Mock Trial Competition for 2021.

The Law Day Podcast Contest is open to high school students who can work individually or in groups to create a 5-10 minute podcast. The 2020 theme was an exploration of the 19th Amendment and voting rights. Students from around the state participated in the contest. The 2020 winner, Elinor Smith, was featured on Boise State Public Radio.

Finally, LRE continues to publish, both in hard copy and electronically, 18 in Idaho, which helps young people understand their rights and responsibilities as they reach the age of majority.
Continuing Legal Education (CLE)

The ILF CLE core focus includes statewide outreach, presentations from the judiciary, enhanced opportunities for ethics credit, the First or Next CLE series, and promotion of webcasts and online streaming rentals. In 2020, CLE programming was quickly moved from in-person programs to webcasts, Zoom, and online streaming and rental programs. The total ILF seminar attendance in 2020 was 1,400 and online streaming rentals were 2,727. Total ILF CLE attendance increased slightly over 2019.

Fund Development

Thank you to our generous 2020 donors! Overall, donations to the Foundation were over $133,000, an increase of 21% over 2019.

Access to Justice, which supports Idaho Legal Aid Services, the Idaho Volunteer Lawyers Program, and DisAbility Rights Idaho, raised nearly $200,000, an increase of 26% over 2019. Volunteers and staff worked diligently to create new and innovative ways to deliver needed services and program activities. We appreciate donors’ increased commitment to supporting the work of the Foundation.

Volunteer Service & Donations

Idaho attorneys and non-attorneys volunteer their time and provide the expertise and resources to support the Foundation. Special thanks to those of you who supported us in 2020 with your gifts of time, expertise, and treasure. The Foundation’s programs and services continue because of your commitment and continued support.

Professional Award Nominations

The Idaho State Bar Board of Commissioners is now soliciting nominations for professional awards. These awards were initiated by the Board of Commissioners to highlight members who demonstrate exemplary leadership, direction and commitment in their profession.

Distinguished Lawyer Award: This award is given to an attorney (or attorneys) each year who has distinguished the profession through exemplary conduct and many years of dedicated service to the profession and to Idaho citizens.

Distinguished Jurist Award: This award recognizes excellence, integrity, and independence by a member of the judiciary. Nominees are selected for their competence, fairness, goodwill, and professionalism.

Professionalism Awards: These awards are given to at least one attorney in each of Idaho’s seven judicial districts who has engaged in extraordinary activity in his or her community, in the state, or in the profession, which reflects the highest standards of professionalism.

Pro Bono Awards: Pro bono awards are presented to attorneys from each of the judicial districts who have donated extraordinary time and effort to help clients who are unable to pay for services.

Service Awards: Service awards are given each year to lawyers and non-lawyers for exemplary service to the Bar and/or Idaho Law Foundation.

Outstanding Young Lawyer: The purpose of this award is to recognize a young lawyer who has provided service to the profession, the Idaho State Bar, Idaho Law Foundation, and the community, and who exhibits professional excellence.

Section of the Year: The Section of the Year Award is presented in recognition of a Practice Section’s outstanding contribution to the Idaho State Bar, to their area of practice, to the legal profession, and to the community.

Recipients of the awards will be announced in May. The Distinguished Lawyer, Distinguished Jurist, Outstanding Young Lawyer, Section of the Year, and Service Awards will be presented at the Annual Meeting. Professionalism and Pro Bono Awards will be presented during each district’s annual resolutions meeting in the Fall.

Award nominations should include the following:

- Name of the award;
- Name, address, phone, and email of the person(s) you are nominating;
- A short description of the nominee’s activity in your community or in the state, which you believe brings credit to the legal profession and qualifies him or her for the award you have indicated;
- Any supporting documents or letters you want included with the nomination; and
- Your name, along with your address, phone, and email.

You can nominate a person for more than one award. Nominations are accepted throughout the year.

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Idaho State Bar
Cowpastures in the Supreme Court:
Implications for Idaho’s Federal Lands

Murray D. Feldman

In U.S. Forest Service v. Cowpasture River Preservation Association, the United States Supreme Court upheld the U.S. Forest Service’s grant of a natural gas pipeline right-of-way beneath the Appalachian National Scenic Trail within a national forest in Virginia. In its most recent federal public lands decision, the Court relied on general property law principles and application of the implicated statutory language.

The Court rejected the respondent conservation groups’ and Fourth Circuit’s reasoning that the lands traversed by the Trail became part of the National Park System and were therefore excepted from the definition of “Federal lands” under the Mineral Leasing Act (MLA). That Act authorizes the Forest Service to grant a natural gas pipeline right-of-way over “Federal lands” for which it has jurisdiction.

Although the decision arose in the context of the famed Appalachian Trail footpath running some 2,220 miles from Georgia to Maine, Cowpasture also has implications for the management of Idaho’s extensive federal lands. There are six National Trails System components in Idaho, as well as many other overlay designations on Idaho’s federal lands.

Idaho also has instances of multi-agency jurisdictional management of federal land units, such as the City of Rocks National Reserve (a National Park System unit operated by the State of Idaho Department of Parks and Recreation under a long-term cooperative agreement) and Craters of the Moon National Monument and Preserve (with National Park Service management of a portion of the Monument and all of the Preserve, and Bureau of Land Management (BLM) administration of another part of the Monument). Those and other multi-agency jurisdictional arrangements in Idaho may be affected or clarified by the Supreme Court’s handling of analogous agency jurisdiction issues in Cowpasture.

This article first discusses the background of the Cowpasture decision and the statutory landscape of the federal lands jurisdiction at issue. Next, it reviews the Supreme Court’s approach and analysis in Cowpasture, and then concludes with a discussion of the decision’s implications for federal public lands management generally and the implications for Idaho’s federal lands.

Background

In Cowpasture, petitioner Atlantic Coast Pipeline (ACP) sought to build and operate a 604-mile natural gas pipeline...
from West Virginia to North Carolina. The pipeline’s route would cross 16 miles of the George Washington National Forest, including a 0.1-mile segment some 600 feet beneath the Appalachian Trail. The National Park Service is responsible for the overall administration of and coordination for the Trail, which traverses federal, state, and private lands. In 2018, the Forest Service issued ACP a special-use permit and MLA right-of-way for the pipeline.

System Act (Trails Act), the Forest Service retained “ownership over the land itself” and had authority to grant the MLA pipeline right-of-way.

The case thus involved the intersection of several federal public lands laws—the Weeks Act, National Park System Organic Act, National Trails System Act (Trails Act), and MLA—and Congress’ plenary Property Clause constitutional authority to choose which Executive Branch department would have administrative jurisdiction over certain portions of the federal public lands. The basic federal public lands statutory framework at issue in Cowpasture is set out in the following.

The roots of the National Forest System in the eastern United States trace to the 1911 Weeks Act. That Act authorized the federal acquisition of private forest lands there to be “permanently reserved, held and administered” by the Secretary of Agriculture “as national forest lands.” Previously, in 1891, Congress authorized the President to “set apart and reserve . . . public land bearing forests . . . as public reservations.”

In the national forest Organic Administration Act of 1897, Congress provided that “[n]o national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber.” From their inception, the national forests, administered by the Secretary of Agriculture following the 1905 Forest Transfer Act, were to be managed for “multiple use,” diverse, public purposes including commercial activities such as timber harvest, mining, grazing, and energy development.

In contrast to the National Forest System, Congress established the National Park System within the Department of the Interior to preserve, not develop, federal lands and resources. The Park Service’s preservation mission is very different from the Forest Service’s utilitarian mission. In 1916, Congress provided that the “fundamental purposes of the said parks, monuments, and reservations . . . is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same . . . unimpaired for the enjoyment of future generations.”

Park lands are to be preserved and, where possible, enjoyed. Under the Park Service organic legislation, the areas in the National Park System “shall include any area of land and water administered by the Secretary [of the Interior], acting through the [Park Service] Director, for park, monument, historic, recreational, or other purposes.”

The 1968 National Trails System Act designated the Appalachian Trail as a National Scenic Trail to “be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.” It authorized creation of a National Trails System comprised of National Historic Trails, National Recreation Trails, and National Scenic Trails.

In the Trails Act, Congress did not change the jurisdictional status of the lands over which the trails cross. The Act did not “transfer among Federal agencies any management responsibilities established under any other law for federally administered lands” traversed by a designated trail. As Professor Fairfax explained in 1974, in what turned out to be a prescient view that the Court would adopt in Cowpasture, “[i]n respect of which Secretary has overall responsibility for a trail [under the Trails Act], the Secretary of the Interior is in charge when a trail crosses Park or Bureau of Land Management lands and the Secretary of Agriculture is responsible for management when a trail crosses Forest Service land.”

The Appalachian Trail originally was conceived by private individuals and hiking clubs in the 1920s. The Forest Ser-
vice and the Park Service dedicated significant effort to trail building under various Depression-era public works programs, completing the Trail in 1937.20 Today, the Trail passes through 14 states and eight national forests (that, together, host 1,015 miles, or 47 percent of the trail); six national parks; two national wildlife refuges; and 67 state-owned land areas.21 Roughly half of the Trail remains on nonfederal lands.

Despite the federal land managers’ important roles, most responsibility for Trail management remained with the local clubs that took responsibility for construction and maintenance of local Trail segments.22 After World War II, and throughout the 1950s and 1960s, discord and lack of coordination among the many different trail clubs, private landowners, and various agencies regarding the footpath revealed the need for a central entity to perform a unifying, coordinating role, especially with respect to government acquisition and protection of private lands.23 The hiking advocates’ efforts culminated with the 1968 passage of the Trails Act.

The MLA authorizes the “Secretary of the Interior or appropriate agency head” to grant rights-of-way through any federal lands “for pipeline purposes for the transportation of oil [and] natural gas.” “Federal lands” means “all lands owned by the United States except lands in the National Park System.”24

The Supreme Court’s Cowpasture decision

The 72 majority opinion, by Justice Thomas, framed the Court’s task as focusing on “the distinction between the land that the Trail traverses and the Trail itself, because the lands (not the Trail) are the object of the relevant statute.”25 After reciting the pertinent MLA provisions, the Court’s inquiry became “whether the lands within the forest have been removed from the Forest Service’s jurisdiction and placed under the Park Service’s control because the Trail crosses them. If no transfer of jurisdiction has occurred, then the lands remain National Forest land, i.e., ‘Federal lands’ subject to the grant of a pipeline right-of-way.”26

Key to the Court’s analysis was the Trails Act’s language providing that the Forest Service entered into “right-of-way” agreements of its own with the National Park Service for the segments of the Appalachian Trail that traversed national forest land, and that such right-of-way agreements did not convert those “Federal lands” into lands within the National Park System.27

The majority opinion’s analysis focused on three main points: general private property law principles as applied to sorting out the questions of overlapping agency jurisdiction; the effect, if any, of the Trails Act’s use of the terms “administration” and “management” to describe the agencies’ roles; and the policy argument against presuming a silent transfer of agency jurisdiction under the Trails Act.

First, the Court relied on general private property law principles concerning easements and rights-of-way. It began with the principle that a right-of-way is a type of easement granting “a nonowner a limited privilege to use the lands of another.”28 Such easements grant only “nonpossessory rights of use limited to the purposes specified in the easement agreement.”29 An easement does not divest the original owner of its property interest in the estate over which the easement is granted, so that both “a possessor and easement holder can simultaneously utilize the same parcel of land.”30 Thus, “as would be the case with private or state property owners, a right-of-way between two [federal] agencies grants only an easement across the land, not jurisdiction over the land itself.”31

The Court acknowledged that while “the Federal Government owns all lands involved here,” the same general principles of private property law apply.32 Thus, “read in light of basic property law principles, the plain language of the Trails Act and the agreement between the two agencies did not divest the Forest Service of jurisdiction over the lands that the Trail crosses.”33 The Forest Service’s right-of-way grant to the Park Service for the Trail gave the Park Service “an easement for the specified and limited purpose of establishing and administering the trail, but the land itself remained under” Forest Service jurisdiction.34

Second, the dissenting opinion (written by Justice Sotomayor and joined by Justice Kagan) cited the distinction between “administration” and “management” in the Trails Act, similar to the Fourth Circuit’s approach. The dissent argued that the Park Service “administers” the Trail, while the Forest Service “manages” the national forest lands traversed by the Trail, and that therefore under the
The Court’s decision focused on the forest service's authority to issue the challenged pipeline right-of-way beneath the Trail, not on whether that authorization was correct under any standard that might be applicable. In a footnote, the Court recognized that “[o]bjections that a pipeline interferes with rights of use enjoyed by the National Park Service would present a different issue.”

Among other things, the pipeline Trail crossing would have workstations located on private land, some 1,400 feet and 3,400 feet distant from the Trail; ACP would use a drilling method that did not require any land clearing or digging on the Trail’s surface; entry and exit points for the underground Trail boring would not be visible from the Trail; and no detour would be required for Trail users. Accordingly, the Court reversed the court of appeals’ judgment and remanded the case for further proceedings.

Implications for Federal Lands Management in Idaho

The Cowpasture decision upholds the Court’s approach from 110 years ago that “it is not for the courts to say how” the nation’s public lands “shall be administered. That is for Congress to determine.” The Cowpasture decision thus respects the jurisdictional boundaries between different federal land management agencies as established by Congress. What Congress specifies in designating legislation will be honored by the federal courts and not presumed to be changed by Executive Branch administrative delegation or classification.

Next, Cowpasture provides an example of how the overlay approach of federal land management and designation versus the envelope approach may be applied on the ground. The Appalachian Trail is an overlay of a particular use—a recreational footpath—on national forest land that is coordinated with and connected to the same use of other federal, state, and private lands under the National Scenic Trail designation. But that coordinated Trail use does not change the legal status of the land or dispossess the Forest Service of its jurisdiction.

By contrast, the respondents and the dissent advocated for an enclave theory whereby the Trails Act would have placed jurisdiction over the entire Trail corridor with the National Park Service. Under the enclave theory, every interest has its own space on the federal lands, often achieved at great expense or effort in terms of legislation, political capital, or court decisions.

“The crucial question under enclave management is where the national park boundary is drawn, or whether land shall be in a park or national forest. But once the battle is over and the line drawn, the negative imperative of such parcelization comes into play. What you have not won for your categorical enclave is not mandated to be managed for your purposes.”

Described federal wilderness or national park areas are examples of enclave management, whereas the National Trail System designations on existing state, federal, and private lands are examples of overlay management. In general, as overlay management provides more flexibility for the accommodation of multiple stakeholder interests, that approach may be more likely to lead to a broader consensus on public land management.

Thus, to the extent that Cowpasture upholds the Trails Act’s overlay approach, it may signal the Court’s support for implementing similar approaches on the public lands. This, in turn, may bode well for the continued application and innovation of collaborative and cooperative approaches in Idaho and elsewhere, including for example the Owyhee Initiative and collaborative forest management processes.

The Owyhee Initiative was a collaborative effort, sanctioned by Senator Mike Crapo, to bring together diverse parties—including ranchers, environmental interests, Native Americans, recreationists, the U.S. Air Force, and others—to address livestock grazing, wilderness, wild and scenic rivers, and other uses on and above BLM public lands in southwestern Idaho’s Owyhee County.

The resulting consensus agreement was incorporated into legislation passed as part of the 2009 Omnibus Public Land Management Act that, among other things, designated almost 517,000 acres in six wilderness areas and 316 miles of wild and scenic rivers in 16 segments in the Owyhee Canyonlands. Under the
also within Idaho are portions of six National Trails System components.48 Considering the number and extent of these segments, Cowpasture highlights the potential reach and role of the Trails Act in Idaho. While these Trails Act designations do not displace the underlying management jurisdiction over the federal lands traversed by the trails, or state or private lands for that matter, the effect of the designations may still need to be considered in agency management decisions.49 The Cowpasture approach is consistent with prior applications of these principles in Idaho.

For instance, in the Access Fund City of Rocks case, the Idaho federal district court upheld the Park Service’s authority to consider potential impacts on the context and visitor experience of the California National Historic Trail in the agency’s implementation of a climbing ban on certain rock formations in the City of Rocks National Reserve.50 In the Idaho Rivers United Highway 12 corridor case, the district court held that the Forest Service retained jurisdiction and management duties following its grant of a highway right-of-way, within the Clearwater and Lochsa Rivers Wild and Scenic River Corridor, to the Idaho Department of Transportation for Highway 12.51

Both of these cases illustrate, as does Cowpasture, the potential effect of Trails Act or other overlay designations on land management decisions in Idaho and the retained jurisdiction of the federal agency for public lands traversed by a National Trails System segment.

Conclusion

In Cowpasture, the Supreme Court upheld the primacy of Congress’ allocation of agency jurisdiction on the public lands, the application of general property law principles to federal lands rights-of-way, and the use of the overlay management approach found in several federal lands statutes and likely to continue in future legislative and administrative applications for public land decision-making.

These legacies of Cowpasture are likely greater than any practical effect on the ACP project that was before the Court. Ironically, that project was cancelled just weeks after the Court’s decision, owing—the company said—to the difficulties in obtaining other future permits and approvals for the pipeline, even though the Court had determined that the Forest Service had jurisdiction to issue the special-use permit to cross beneath the Appalachian Trail.52

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Endnotes

1. The positions, opinions, and conclusions in this paper are solely the author’s and do not reflect the opinion of any client or organizational affiliation of the author.
2. 140 S. Ct. 1837 (2020).
3. Id. at 1844, see also 30 U.S.C. § 185.
7. 170 S. Ct. at 1844 (emphasis by Court).
16. Id. § 1242(a).
17. Id. § 1246(a)(1)(A).
23. See, e.g., Fairfax, note 18 at 31–33.
24. 30 U.S.C. § 185(a), (b) (emphasis added).
25. 140 S. Ct. at 1844.
26. Id.
27. Id.(citing, inter alia, 16 U.S.C. § 1246(a)(2)).
28. Id.
29. Id.
30. Id.
31. Id.
32. Id. at 1845.
33. Id. at 1846.
34. Id.
35. Id. at 1847; see also note 14 and accompanying text.
36. 140 S. Ct. at 1847.
37. Id.
38. 16 U.S.C. § 1281(c); see 140 S. Ct. at 1847.
39. 140 S. Ct. at 1847.
40. Id. at 1850 (citing and quoting 16 U.S.C. § 521); see also 16 U.S.C. § 1246(a)(1)(A).
41. 140 S. Ct. at 1850.
42. Id. at 1847, 1850.
43. Id. at 1850 n.7.
49. See Cowpasture 140 S. Ct. at 1850 n.7.
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The Clean Water Act (“the Act”), signed into law in 1972, established federal jurisdiction over “navigable waters,” defined in the Act as the “waters of the United States.” This serves as the basis for the permitting scheme and other programs set forth in the Act.

The Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers have discretion to define “waters of the United States” in regulations. They have done so through various rulemaking procedures since the Act was passed by Congress. The scope of “navigable waters” has gone back and forth over time, not unlike a ping pong ball.

Over the past 20 years, key rulings by the U.S. Supreme Court have resulted in uncertainty regarding the scope of federal jurisdiction under the Act. Solid Waste Agency of Northern Cook County v. Army Corps of Engineers in 2001 (“SWANCC”) and Rapanos v. United States in 2006 raised difficult questions regarding the scope of federal jurisdiction over wetlands, intermittent streams, and other waters.

In SWANCC, the Court held that the Corps exceeded its statutory authority under the Act by regulating non-navigable, isolated waters based solely on their use as habitat for migratory birds.

In Rapanos, the Court again struck down asserted federal jurisdiction, this time over isolated wetlands. A plurality opinion of four Justices, authored by Justice Scalia, interpreted “waters of the United States” as including “relatively permanent, standing or continuously flowing bodies of water” that are connected to traditional navigable waters, in addition to wetlands that have a continuous surface connection to such waters. Justice Kennedy concurred in the judgment, interpreting “waters of the United States” to include those wetlands that “possess a significant nexus” to waters that are or were navigable in fact or that could reasonably be so made.”

Chief Justice Roberts penned his own concurring opinion in Rapanos, observing that the Corps’ “boundless view” of federal jurisdiction “was inconsistent with the limiting terms Congress had used in the Act.” He lamented the agency’s aborted rulemaking effort following the Court’s SWANCC decision.

Indeed, both the SWANCC and Rapanos decisions were issued during the Administration of George W. Bush. And while they were eventually met with various guidance documents during 2003 and 2008, no new rulemaking resulted during Bush’s tenure. An attempted Congressional response to SWANCC and Rapanos, in

Red Paddle-Blue Paddle: Clean Water Act Ping Pong

Norman M. Semanko
It may well be that challenges to the jurisdictional rule have the potential to place the jurisdiction question squarely before the U.S. Supreme Court via a petition for writ of certiorari – perhaps before any of the direct challenges to the 2020 Rule that are still pending in the various federal district courts.

It is certainly possible that the Supreme Court will once again attempt to provide some clarity regarding the scope of “navigable waters” and the “waters of the United States” over which the federal government has jurisdiction. After all, it has already been 14 years since Rapanos was infamously decided on a 4-1-4 split vote, without providing a definitive jurisdictional test. And that decision came well before the regulatory ping pong game commenced between the 2015 Obama and 2020 Trump Rules. It may well be time for the Court to weigh in.

Pong? In the meantime, the new Biden Administration has already signaled that it may seek to reverse the 2020 Trump Rule. Among the historic flurry of executive orders issued by President Biden on his first day in office was one requiring federal agencies to review regulatory actions taken during the Trump Administration, including those involving water quality. It appears that the next ball may be served up soon in the Clean Water Act jurisdiction game. 

Endnotes
1. Aficionados of table tennis may question this choice of paddle colors, since the rules have long required that paddles must be black on one side and red on the other side. However, the Rules of Table Tennis have recently been revised to approve the use of additional bright colors - including blue - on the side opposite the black side of paddle, effective October 1, 2021 (following the Tokyo 2020 Olympic and Paralympic Games). The International Table Tennis Federation Handbook, Laws of Table Tennis, Rule 2.4.6 (Forty-eighth Edition 2020), retrieved at https://www.ittf.com.
5. See e.g. S. 787 (111th Congress), introduced on April 2, 2009, retrieved at https://www.congress.gov/bill/111th-congress/senate-bill/787. (“Reaffirms federal jurisdiction over all waters of the United States and overturns the decisions of the United States Supreme Court in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers and Rapanos v. United States.”)
8. 84 Fed. Reg. 56626 (October 22, 2019).
11. Appellate Case Nos. 20-1238, 20-1262, 20-1263 (10th Cir.).
14. Appellate Case No. 19-35469 (9th Cir.).
Environmental Plaintiffs and Access to Judicial Review

Julia S. Thrower

With the growth of recreation-based tourism and second home purchases, and the potential shift of the population from urban to rural areas amid the coronavirus pandemic, land use planning in rural areas has become increasingly important. Rural areas have significant ecological, cultural, agricultural, and recreational resources. The rise of environmentalism and a desire to protect a certain quality of life has increased awareness of the impacts that land use decisions by local governments have on these resources and on community development.

Poor land use planning and permitting decisions, while seemingly small, can have impacts that go well beyond adjacent landowners, such as the disruption of important agricultural and wildlife corridors, fragmentation of open space, creation of sprawl and exacerbation of traffic, and diminishment of the character and quality of life of rural communities.

State law requires that all municipalities prepare a comprehensive plan that provides the vision and goals for a community’s future and a foundation for all land use regulations and permitting decisions. Land use decisions must be in accordance, or not in conflict, with the comprehensive plan.

Unfortunately, there is little recourse for community members interested in protecting environmental and community values to challenge poor land use planning or permitting decisions. This article provides a review of Idaho’s standing jurisprudence where plaintiffs allege environmental, aesthetic, or community harm, and suggests that changes should be made in the courts to close the division between a local government’s authority to use land use regulations to protect environmental values and community members’ ability to ensure that land use decisions are made in the public interest.

Land use, aesthetics, and the environment

As early as 1954, the United States Supreme Court recognized that through the “broad and inclusive” concept of public welfare, it is “within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” The Idaho Supreme Court has adopted this broad and inclusive view of public welfare to include aesthetic and environmental values and to preserve neighborhood character.

For example, in Terrazas v. Blaine County, the Idaho Supreme Court upheld the county’s denial of a subdivision
application based on a zoning ordinance which prohibited development along the hillsides and mountains. Citing to Supreme Court caselaw, the Terrazas Court affirmed that "aesthetic concerns, including the preservation of open space and the maintenance of the rural character . . . are valid rationales for the County to enact zoning restrictions under its police power." 28

Although the authority of a local government to regulate land use based on environmental or aesthetic concerns has been affirmed by Idaho courts, the courts and state law have given community members interested in protecting such resources very little recourse when land use planning decisions are made that harm those values.

**Can environmental harm be an injury?**

Idaho’s Constitution does not have a “case or controversy” requirement, like the federal counterpart. Idaho interprets standing largely based on federal law by requiring that a plaintiff demonstrate a concrete and particularized injury-in-fact that is actual or imminent; a causal connection between the injury and the challenged conduct; and that a favorable decision by the court will redress the injury.

Starting in the 1970s, federal courts started to recognize that harm to environmental, recreational, and aesthetic interests can constitute injury-in-fact as long as the plaintiff was among the injured. Idaho, however, departs from federal standing jurisprudence in its refusal to recognize a county ordinance that required federal and state agencies to comply with Boundary County's land use plan. The court dismissed all but one individual plaintiff for lack of standing, holding that those plaintiffs lacked standing because the alleged recreational and aesthetic harm was not particularized and individual, but was suffered alike by all citizens of the county.

The court conferred standing, however, to a commercial outfitter guide who alleged he would lose access to open space that he used for professional guiding trips if the County’s ordinance was allowed to stand.29 The court rationalized the guide’s reliance on access to “federal and state public lands in the county as a site for professionally guiding for compensation over 200 clients” was sufficient to support a concrete and particularized injury.30

Seven years after Boundary Backpackers, the Idaho Supreme Court again opined in Selkirk-Priest Basin Association v. State on standing where a community organization alleged harm to aesthetic interests and recreational enjoyment from a proposed timber sale on State endowment lands.31 Finding the plaintiff lacked standing, the court characterized the aesthetic and recreational harm as “at best a generalized grievance.”32 The court contrasted the harm alleged by the Selkirk-Priest Basin plaintiff to that alleged by the outfitter guide in Boundary Backpackers, stating that standing there was based on the guide’s affidavits that “revealed that he had relied on county lands as a site for professionally guiding for compensation.”33

Although the Selkirk-Priest Court contrasted the monetary nature of the harm alleged in the Boundary Backpackers case compared to here, it stopped short of categorizing all alleged harm based on environmental or aesthetic values as general grievances. Rather, the court rationalized denying standing because the most regular contact with the area was from “one member who visits the area two weeks out of the year.”34 The court did not find that such “occasional use” created a “distinct palpable injury not shared in substantially equal measure by all or a large class of citizens.”35

By not holding that environmental harm is a per se general grievance, did the court leave open the possibility that someone could sufficiently allege environmental harm that is particularized and individual? For example, could someone who bikes to work every day sufficiently allege particularized harm due to increased traffic (and thus reduced safety), dust, and air pollution? What about an angler who loses access to a fishing hole he visits once a week to catch fish to feed his family?

**LLUPA’s “Affected Person” requirement**

The Local Land Use Planning Act (LLUPA) provides a private right of action for an individual to challenge a local government’s permitting and rezoning decisions.36 In 2010, LLUPA added the additional requirement to the standing inquiry that a plaintiff challenging a land use decision must have “a bona fide interest in real property which may be adversely affected” by that decision.37

Additionally, even if standing is conferred based on the “affected person” status, a plaintiff must also prove that there is a prejudice to a substantial right from approval or denial of a permit. Although

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"Starting in the 1970s, federal courts started to recognize that harm to environmental, recreational, and aesthetic interests can constitute injury-in-fact as long as the plaintiff was among the injured."
successful plaintiffs challenging approval of a permit have alleged non-monetary harms to the use and enjoyment of their property, such as dust, noise, and traffic, they have also alleged some form of monetary harm.\textsuperscript{20}

The “affected person” requirement is a complete bar to non-landowners seeking judicial review of land use permitting decisions. This preclusion is particularly troubling because seemingly minor permitting decisions can have consequential effects on the environment and future character and quality of life in a community.

To illustrate, in 2020 Valley County approved a conditional use permit for a mining company to construct an industrial facility on a 25-acre parcel surrounded by agricultural land and over eight miles from the nearest town. The facility would include over 64,000 square feet of building space, a 300-space parking lot, and a staging area for large trucks hauling, among other things, hazardous materials.

A community organization and individuals objected to the permit in part based on inconsistency with several goals and objectives of the comprehensive plan, including preserving agricultural land and failure to concentrate commercial uses to prevent sprawl. There were also objections to predicted increases in traffic and safety concerns of haul trucks traveling on a rural road largely used for recreational access to a popular river and the Frank Church River of No Return Wilderness.

In this case, however, none of the organization’s members or individuals could bring a challenge to the approval of the permit because none were landowners in the vicinity of the proposed project. In fact, the same entity that owns all the parcels surrounding the 25-acre parcel at issue sold that parcel to the mining company.

Approval of this permit is likely to not just have significant and immediate impacts on the local community, but also have significant consequences for the future development of this area. Plaintiffs interested in protecting environmental values and community character, and ensuring permitting decisions are consistent with the vision and goals of the comprehensive plan are, according to LLUPA, precluded from seeking judicial review.

**Conclusion**

Land use planning arose out of the need to protect public welfare, which the Idaho Supreme Court has said includes environmental values. As the population of Idaho continues to increase and rural areas experience development pressure, protecting environmental and community resources becomes increasingly important for both the tourism economy and the quality of life.

The ability of community members to ensure that local government decisions are made in the public interest, rather than what will benefit an individual, become increasingly important. No Idaho court, however, has conferred standing to a plaintiff in a land use case on the basis of environmental harm alone. By characterizing environmental harms as general grievances and focusing on economic damage, the courts do disservice to the protection of the public interest.

**Julia S. Thrower** has a solo practice in McCall where she practices environmental and land use law. Prior to moving to McCall, she was a trial attorney for the U.S. Department of Justice in the Environment and Natural Resources Division. In her free time, she enjoys taking her two children out to experience Idaho’s natural abundance.

**Endnotes**


4. Although not standing cases, there are a limited number of cases where the plaintiff alleged environmental and/or recreational harm in contexts outside of local land use decisions. These are not discussed here.


8. Id. at 198, 207 P.3d at 174.

9. Although not standing cases, there are a limited number of cases that recognize environmental and/or recreational harm in contexts outside of local land use decisions. These are not discussed here.


11. Id. at 375-76, 913 P.2d at 1145-46.

12. Id.


14. Id. at 834, 919 P.2d at 1035.

15. Id.

16. Id.

17. Id.


20. See, e.g., 917 Lusk, LLC v. City of Boise, 158 Idaho 208, 243 P.3d 41 (alleging decrease in customers patronizing business due to lack of parking).

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A Quick Primer on the Newly Revised NEPA Regulations

Dylan B. Lawrence

Note to Reader: This article discusses changes to federal regulations adopted during the last year of the Trump administration that, as of the date of submission, the Biden administration is evaluating for potential repeal or revision. It is important for the reader to confirm the status of that effort before relying on this article.

The National Environmental Policy Act (NEPA) requires federal agencies to evaluate the environmental impacts of their proposed actions before undertaking them. Generally speaking, the NEPA process is a public, open, and deliberate one, with opportunities for public comment, coordination with other agencies, and, ultimately, a written document explaining the agency’s evaluation of impacts, alternatives, and selection of the preferred alternative. Due to the prevalence of federally owned land within Idaho, any change to NEPA is of potential significance here because it can affect the time and expense involved in obtaining federal approvals for projects and the scope and design of the project itself.


This article highlights three revisions that are particularly significant: (1) a more specific definition of what constitutes a “major federal action” triggering the NEPA process; (2) narrowing the scope of environmental impacts to be evaluated; and (3) narrowing the universe of alternative actions to be considered. It is intended for attorneys who deal with NEPA every now and then, but who have yet to become acquainted with the revisions. A comprehensive treatment of the entire rule is beyond the scope of this article (and the word limit of this publication), but more detailed articles and the rule itself are available online for further reading.

How NEPA works

Before discussing the recent revisions, it is helpful to briefly summarize how the NEPA process has worked under the statutory language and the initial implementing regulations. With as many steps and “moving parts” as there are to the NEPA process, the statute itself is relatively short on detail. It establishes that NEPA’s requirements apply to “major Federal actions significantly affecting the quality of the human environment” and that when...
that standard is met, a detailed report on the "environmental impact of the proposed action" is required "to the fullest extent possible." Prior to preparing that environmental impact statement ("EIS"), the federal agency is required to consult with and obtain comments of any other federal agency with jurisdiction over, or special expertise regarding, the environmental impacts.⁴

CEQ’s implementing regulations added significant detail and additional steps and inquiries to the process established by the relatively undetailed NEPA statute. For example, some types of actions without significant effects to the environment can be "categorically excluded" altogether from the NEPA process. Other actions that do not qualify for a categorical exclusion but would not significantly affect the environment can be the subject of an environmental assessment and "finding of no significant impact"—a much less involved inquiry than a full-blown EIS. And, for major federal actions not qualifying for one of these less involved reviews, the CEQ regulations provided detailed substantive and procedural requirements for the preparation of the EIS.

Overall, NEPA is considered to be procedural in nature in that it does not mandate any particular outcome or result but requires the federal agency to take a "hard look" at environmental impacts and alternatives.⁵ And, as one might expect, even though the NEPA statute is silent on the issue, NEPA decisions may be appealed to federal district court pursuant to the Administrative Procedure Act (APA).⁶

While the obligation to comply with NEPA technically falls on federal agencies, NEPA directly affects private parties who need federal approval for a particular project. In a state like Idaho with so much federally owned land, this means NEPA likely has some relevance to most projects of moderate or large size. It is often the private applicant for a federal approval who conducts much of the work needed for a NEPA evaluation and who experiences the effects of any delays.

"In a state like Idaho with so much federally owned land, this means NEPA likely has some relevance to most projects of moderate or large size."

Reducing delay and complexity

Since adopting its NEPA rules in 1978, CEQ has issued more than 30 guidance documents regarding implementation of and compliance with NEPA.⁷ In addition, federal agencies such as BLM, the U.S. Forest Service, and the Bureau of Reclamation have adopted their own extensive rules and guidance documents regarding NEPA.⁸ Moreover, as one might expect, NEPA decisions have generated a significant body of case law by the federal courts.⁹ Needless to say, these various sources of procedures and legal standards make NEPA compliance a complex proposition.

Based in part on this complexity, the NEPA process can take some time. According to CEQ, when a full-blown EIS is required, the average NEPA review time for federal highway projects has exceeded seven years and the average NEPA review time across the federal government has been four and a half years.¹⁰ And, to be clear, these figures only include the time between publication of the notice of intent to prepare an EIS through the issuance of the final EIS and corresponding record of decision.¹¹ They do not include the time required to resolve subsequent judicial challenges to NEPA decisions.¹²

CEQ adopted its recent rule with the goal of reducing these complexities and delays.¹³ Its rule does so through a variety of means, including codifying existing case law and agency practices, establishing concrete time and page limits for NEPA documents, and simplifying and narrowing the scope of the NEPA review.¹⁴ Three of the more significant changes are as follows:

1. Revised Definition of “Major Federal Action.” As previously described, the touchstone for NEPA applicability is whether there are "major Federal actions significantly affecting the quality of the human environment.” Therefore, any change to the definition of what constitutes a "major federal action" is inherently significant.

CEQ previously defined a "major federal action" as an action "with effects that may be major and which are potentially subject to Federal control and responsibility.”¹⁵ It also stated that such actions tend to fall into one of four categories: (1) adoption of official policy, rules, and regulations; (2) adoption of formal plans upon which future agency actions will be based; (3) adoption of programs to implement a specific policy or plan; and (4) approval of specific projects.¹⁶

For the most part, the new rule retains these standards. The primary difference is that the definition now enumerates seven categories of actions that are specifically excluded from the definition of a "major federal action.”¹⁷ Of most interest to the author is the exclusion of “Non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project.”¹⁸ This appears to be intended to address what some describe as the "small handles" issue, or what the courts describe as “federalizing” an otherwise non-federal project.

For example, if a project effectively takes place entirely on private and state land, but some aspect of the project (e.g., road and transmission lines) minimally
but sufficiently crosses federal land to require an approval, what is the scope of the NEPA review? Is it limited to the environmental impacts of only that isolated crossing, or is there a sufficient federal nexus to evaluate the impacts of the entire project? While there is some existing case law here in the Ninth Circuit on this issue, CEQ regulations now contain more specific legal standards (though they also still seem like potential subjects of much litigation).

Other actions expressly excluded from the definition of “major federal action” include actions located entirely outside of the United States, actions that are both non-discretionary and within the agency’s statutory authority, actions that do not result in a final agency action for APA purposes, enforcement actions, funding assistance solely in the form of general revenue sharing funds with no federal control over their subsequent use, and loans and other financial assistance in which the agency does not exercise sufficient control over the effects of such assistance.

2. Revised Definition of “Effects” and Elimination of “Cumulative Impacts.” Again, because NEPA only applies to major federal actions that “significantly affect[] the quality of the human environment,” defining what qualifies as an “effect” is also critical. Under the original regulations, federal agencies were required to evaluate direct effects (effects caused by the action at the same time and place), indirect effects (effects caused by the action later in time and place), and “cumulative impacts” (impacts that are individually minor but can be significant over time). The revised regulations eliminate these different categories of impacts, and expressly repeal “cumulative impacts” as a concept.

The new regulations define “effects or impacts” as “changes to the human environment . . . that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance.” Similar to the changes to the definition of “major federal action,” the definition excludes certain categories of effects.

For example, the rule states that a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.” It also excludes effects that are remote in time, remote in geography, the product of a lengthy causal chain, and that the agency has no ability to prevent or that would occur regardless of the proposed action. Viewed within the context of the “small handles” issue described in the previous section, these revisions also appear to provide proponents of projects with small federal nexuses the ability to avoid a NEPA evaluation of the entire project, particularly if there are no-federal alternatives to that small federal nexus that, while perhaps not ideal, are still feasible.

3. Narrowing Evaluation of Alternatives. The NEPA statute also includes an express requirement for the federal agency to evaluate alternatives to the proposed action. The original NEPA regulations described the alternatives analysis as “the heart of the environmental impact statement” and required the federal agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” They also required the federal agency to “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency.”

The revised NEPA regulations have eliminated the “heart” reference and the requirement to evaluate “all” reasonable alternatives, simply requiring the agency to “[e]valuate reasonable alternatives” generally. And, the revised regulations actively mandate that federal agencies “limit their consideration to a reasonable number of alternatives.” They also now specifically define the phrase “reasonable alternatives” as “a range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.”

In short, this is a much narrower and more specific delineation of alternatives than was the case under the original regulations, and the fact that the goals of the applicant are now expressly recognized in the rules is significant.

As previously discussed, CEQ’s revisions to its NEPA regulations are extensive, and it is beyond the scope of this article to discuss them all. Some other revisions not discussed here that are still worth noting include: (1) the winnowing of the “intensity factors” that help determine whether impacts are expected to be significant; (2) time and page limits; (3) more express promotion of and procedures for the use of the “categorical exclusions” from NEPA review as previously described; and (4) providing more flexibility for project proponents to prepare NEPA documents.

Uncertainty and risks

The NEPA revisions apply to “any NEPA process begun after September 14, 2020,” and agencies have discretion to apply them to NEPA processes commenced before that date. In either scenario, there is some uncertainty and risk involved in relying exclusively on the revised regulations. As of the time of writing this article, the author is aware of four separate proceedings filed in federal district courts to challenge the revisions and the Biden administration has announced it is evaluating all environmental rules and executive orders issued under the Trump administration for potential repeal or revision, specifically including the New NEPA Rule.

Therefore, during these relatively early days of the effectiveness of the rules, project proponents may want to at least consider the requirements of the prior regulations as they move through the NEPA process in order to minimize litigation risk and associated delays. While it is certainly the case that some of the changes are merely codifications of existing common law developed by the federal courts, many of the changes result in requirements and procedures that are less stringent and more favorable to a project proponent than under the prior regulations.

Conclusion

NEPA is an important statutory program in western states, such as Idaho, given the high proportion of federally owned land. For those practitioners not already steeped in it, hopefully this article provides both a helpful overview of NEPA and a timely update regarding its implementation.
Dylan B. Lawrence is a partner at the small Boise-based firm, Varin Wardwell LLC. He specializes in environmental and natural resources law and is a past chair of the Idaho State Bar’s Environment & Natural Resources Law Section.

Endnotes

1. CEQ is a division of the Executive Office of the President that was created in 1969 by NEPA for the specific purpose of coordinating federal efforts to protect public health and the environment. See generally 42 U.S.C. §§ 4332, 4342, 4344.
2. Id. at § 4332(C).
3. Id. at § 4332(C)(i).
4. Id. at § 4332(C).
6. See, e.g., Western Radio Servs. Co., Inc. v. Glickman, 123 F.3d 1189 (9th Cir. 1997).
8. See id.
9. See id.
10. See id.
11. See id.
12. See id.
14. See id. at 43,306.
16. Id. at § 1508.18(b).
17. New NEPA Rule at § 1508.1(q)(1).
18. Id. at § 1508.1(q)(1)(vi).
19. See, e.g., Sierra Club v. BLM, 786 F.3d 1219 (9th Cir. 2015); Pacific Coast Federation v. Blank, 693 F.3d 1084 (9th Cir. 2012); Rattlesnake Coalition v. EPA, 509 F.3d 1095 (9th Cir. 2007); Sylvester v. Army Corps of Engineers, 884 F.2d 394 (9th Cir. 1989); Enos v. Marsh, 769 F.2d 1363 (9th Cir. 1985).
20. Old NEPA Rule at §§ 1508.7, 1508.8.
22. Id. at § 1508.1(g).
23. Id. at § 1508.1(g)(2).
24. Id.
27. Id. at § 1502.14(a) (emphasis added).
28. Id. at § 1502.14(c).
30. Id. at § 1502.14(f).
31. Id. at § 1502.14(g).
32. Id. at § 1501.3(b)(2).
33. Id. at §§ 1501.5, 1501.10, 1502.7.
34. Id. at § 1501.4.
35. Id. at § 1506.5.
36. Id. at § 1506.13.

The revised regulations eliminate these different categories of impacts, and expressly repeal “cumulative impacts” as a concept.21
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Perfecting a Security Interest in Livestock in Idaho:
A Trap for the Unwary

Samuel F. Parry
Randall A. Peterman

Livestock leases are common in agriculture and provide certain benefits to both the lessor and the lessee. For the lessor, a lease agreement may be a way to generate income and mitigate tax liability when compared to selling the same animals outright. Livestock leases also provide management flexibility to a producer by allowing it to fluctuate its stocking rate without surrendering its ownership of the livestock. For example, a rancher may lease his livestock to another producer in response to drought or financial stress.1 The lease arrangement provides a stream of income with little to no input costs and the lessor can retake possession when his circumstances change, subject to the terms of the lease.

For the lessee, leasing livestock may provide an opportunity to enter the livestock business without the upfront capital normally required to purchase breeding stock. A livestock lessee who is already in the business may lease additional livestock to take advantage of excess feed or as part of a genetic development strategy.

Despite the benefits, livestock lease agreements present pitfalls for the unwary, especially when a security interest in livestock includes an interest in after-acquired livestock.2 In unfortunate cases where a security interest in livestock is not properly perfected, a lessor could lose its cattle, or a creditor could lose its collateral. These pitfalls can be avoided through proper recording by the lessor and adequate due diligence by any potential creditors of the lessee.

Enactment of a centralized UCC-1F system

Prior to 1985, Idaho, like many other states, required creditors to file a UCC-1 with the county to perfect a security interest in a farm product. Congress then enacted the Food Security Act of 1985 (“FSA”), which prohibited such local filings with the county and required all states to create one of two types of central filing systems for farm products. States could implement either a central system for filing financing statements or a central system where buyers of farm products could register to receive direct notice of perfected security interests in farm products.3

Absent one of those two systems, buyers in the ordinary course of business would take farm products free of any security interest even if the interest was perfected and even if the buyer knew about the security interest.4 Idaho opted for a central filing system for financing statements with its Secretary of State.5 Under this system, secured creditors can perfect UCC filings in one centralized location rather than checking county filings in all of Idaho’s 44 counties.

Idaho’s enactment of this statute in 1985 created a totally new and different means for a creditor to perfect its security interest in a farm product. Any and
Example #1: Farmer purchases livestock with the proceeds of a loan from Bank and Bank perfects its security interest by filing a UCC-1F for “farm products” in the “F” filing system with the Idaho Secretary of State. Farmer, as lessee, then leases an additional 1,000 head of livestock from Lessor under a true lease and Lessor inadvertently fails to record the lease with the county recorder. Farmer then files for bankruptcy. Who prevails between the Bank and the Lessor?

Example #2: Farmer purchases livestock with the proceeds of a loan from Bank and Bank perfects its security interest by filing a UCC-1 for “inventory” in the “B” filing system with the Idaho Secretary of State. Farmer, as lessee, then leases an additional 1,000 head of livestock from Lessor under a true lease and Lessor inadvertently fails to record the lease with the county recorder. Farmer then files for bankruptcy. Who prevails between the Bank and the Lessor?

Example #3: Farmer purchases livestock with the proceeds of a loan from Bank and Bank perfects its security interest by filing a UCC-1F for “farm products” with the Idaho Secretary of State. Farmer, as lessee, then leases an additional 1,000 head of livestock from Lessor under a “lease” that Lessor records with the county recorder. Farmer then files for bankruptcy. The lease is determined by a court to be a disguised security agreement. Who prevails between the Bank and the Lessor?

all filings as to collateral other than farm products remained the same—perfection occurred through a UCC-1 filed with the Idaho Secretary of State in the “B” filing system. For farm products, however, perfection can only occur through a UCC-1F filed in the “F” filing system, a totally different centralized UCC system maintained with the Secretary of State. As a result, and for the past 35 years, parallel UCC systems have been maintained by the Idaho Secretary of State—each of which is decidedly different from the other. As a result, statutory and administrative provisions of the “B” centralized system for collateral other than farm products is different than similar provisions of the “F” centralized system for farm products.

Failure of a secured creditor to comply with the appropriate provisions of the correct statute can be fatal to perfection. For example, a security interest in farm equipment (not subject to a certificate of title) from a farmer must occur in the traditional “B” system or else the creditor is not perfected. A security interest in farm products must occur in the “F” system or the creditor is not perfected.

Perfection of livestock leases

It is not commonly understood that livestock leases in Idaho are perfected outside the UCC filing systems. Idaho Code Section 25-2001 deals with perfection of a lessor’s interest in leased livestock, and requires no filing of a financing statement with the Idaho Secretary of State: “All leases of more than ten (10) head of livestock must be in writing and must be acknowledged in like manner as grants of real property, and recorded in the county recorder’s office or offices.”

Leases that do not comply with this section are not perfected: “[T]he failure to comply with the provisions of this section renders the interest of the lessor in the property subject and subsequent to the claims of creditors of the lessee, and of subsequent purchasers and encumbrancers of the property in good faith and for value.” Yes, that is right—a lessor’s interest in a livestock lease can be perfected solely by the recording of an appropriate document with the county recorder where real property documents are normally recorded. Failure of the lessor to comply with the statute means that its interest in the leased cattle is subordinate to the claim of any creditors of the lessee farmer.

A single case from Idaho confirms this outcome. In Whitworth v. Krueger, the bankrupt party (“B”) purchased dairy cows pursuant to a purchase contract with Whitworth (“Seller”). Seller retained a lien on the cattle and properly filed a financing statement pursuant to the UCC. Shortly thereafter, B leased more cattle from Krueger (the “Lessor”). The Lessor of the dairy cows properly filed the livestock lease with the county pursuant to Idaho Code Section 25-2001. B defaulted under both agreements leaving Seller and Lessor to fight over who got the proceeds from the sale of the leased cows. The Lessor lost. The Idaho Supreme Court found that the livestock lease was covered by the UCC, rather than Idaho Code Section 25-2001, because—instead of a true lease—it was commercially indistinguishable from an installment sales contract. Had the livestock lease been a true lease, the Lessor would have successfully protected his interest in the leased dairy cows by filing the lease with the county. This means, in Example #1, the Bank properly perfected its security interest in the livestock (which is a farm product) by filing a UCC-1F, which takes priority over the unperfected leasehold interest of the Lessor under Idaho Code Section 25-2001.

In Example #2, the Bank perfected its security interest in the livestock by the filing of a financing statement, not in the “F” system intended for farm products, but in the “B” system intended for all other types of collateral. Because under Example #2 the Bank did not properly perfect its security interest, neither the Bank nor the Lessor hold a properly perfected security interest in their respective livestock, which is fatal in a bankruptcy.

Use of a belt and suspenders approach

A subsidiary issue lurks behind the scenes here, which made all the difference in the Whitworth case. The UCC has consistently held that, even though a security agreement from a farmer to a bank may look and smell and feel like a true lease agreement, it may in fact be a disguised security agreement subject to UCC filing requirements.

The test for determining whether a lease is a true lease, or a disguised security agreement has evolved since Whitworth. The determination principally depends on the nature and amount of the payment due from a lessee to a lessor at the end of the lease term. Multiple tests are now found in Idaho Code Section 28-1-203 and are paraphrased as follows. A lease will be treated as a security interest if (1) the original term
of the lease is equal or greater than the remaining economic life of the livestock, (2) the lessee is bound to renew the lease or become the owner of the livestock, (3) the lessee has the option to renew the lease for no additional consideration or for nominal consideration, or (4) the lessee has the option to purchase the livestock at the end of the lease term for no additional consideration or for nominal consideration.\textsuperscript{16}

Based on that test, under Example #3 the Lessor will likely lose out even though it properly perfected its leasehold interest in the leased livestock because of the court’s determination that the lease agreement is actually a disguised security agreement. This highlights the importance of structuring the livestock lease properly.

Since this issue may arise in almost any case, a “belt and suspenders” approach by a lessor of livestock is probably advisable as to perfection issues. That is, a lessor should perfect any leasehold interest under Idaho Code Section 25-2001 with the recording of the appropriate document with the county recorder and also file a UCC-1F financing statement with the Idaho Secretary of State under the “F” system. Through this belt and suspenders approach, a lessor is protected, regardless of whether a court determines the lessor’s agreement to be a true lease or a disguised security agreement.

Such an approach is probably advisable in all such situations. If in doubt, any lessor or secured creditor should perfect by any and all means possible, so as to avoid a situation where a lessor’s or secured creditor’s interest is determined by a court to be different than as represented.

Many livestock producers in Idaho rely on livestock leases as part of their production strategy because they can provide more flexibility and require less capital than the outright sale and purchase of the same livestock. Without a proper understanding of the legal principles discussed here, livestock leases can leave unwary producers and creditors with unnecessary financial exposure.

Samuel F. Parry is an attorney with Givens Pursley LLP. Samuel transitioned into a legal career after more than 15 years in production agriculture. During that time, Samuel worked on large commercial cattle operations across the U.S., including his home state of Idaho. He now practices agricultural law, which is an industry-focused area of law that is responsive to the unique challenges associated with food production.

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Endnotes

1. Producers offer their livestock for lease for many different reasons. As one example, producers who run beef cattle on federal grazing allotments sometimes face situations where the allotment is temporarily closed due to fire, drought, overgrazing by feral horses, or any number of unforeseen reasons. The producer must either find alternative feed for its cows or lease them to another producer with excess capacity until conditions allow the producer to retake possession.

2. After-acquired livestock are animals that are purchased after a security interest has attached, usually to replace poor-producing or dead livestock, to properly secure the debt by maintaining the same number of animals that are subject to the security interest.

3. 7 U.S.C. § 1631(e).


5. See Idaho Code §§ 28-5-902, -9-522; IDAPA 35.05.01.

6. An argument might be made that a lease must also be analyzed under the provisions of chapter 12 of the UCC, which governs leases. In such a case, perfection issues may become even more complex, and following the belt and suspenders approach identified in this article becomes even more critical.


9. Id.

10. Id.

11. Id. at 67, 69, 558 P.2d at 1028, 1030.

12. Id. at 67, 558 P.2d at 1028.

13. Id. at 69, 558 P.2d at 1030.

14. Id. (concluding that although the agreement was labeled a “lease,” it was a security agreement since the lessee had the option to purchase the cattle at the end of the term for a nominal ten dollars when both parties agreed the value of the cattle was closer to $10,000).

15. Id. Two other Idaho cases interpret Idaho Code section 25-2001, but do not seem relevant to the facts in the examples used here. First, in Continental Nat. Bank of Salt Lake City v. Naylor, a rancher defaulted on notes held by the bank, 39 Idaho 267, 267, 228 P. 266, 267, (1924). The rancher was in possession of about 1,300 leased ewes that he returned to the owner of the sheep just before the bank foreclosed on the rancher’s outstanding debt. Id. at 267–68, 228 P. at 267–68. The bank claimed a superior interest in the ewes over that of the owner because the owner had not recorded the lease as required by Idaho law. Id. at 268, 228 P. at 268. In this case, the owner won, even though it had not properly filed the lease because the bank was a general creditor and did not actually hold a lien on the sheep. Id.

Second, in Hare v. Young, the rancher secured a loan from the bank by signing a chattel mortgage on 3,000 ewes, many of which were leased. 26 Idaho 682, 683, 146 P. 104, 105 (1915). The bank properly filed the mortgage. Id. After the rancher defaulted on the note, the bank foreclosed and the lessors of the sheep claimed a superior interest. Id. The bank pointed out that the lessors had not filed their lease as required by Idaho law. Id. The lessors claimed that since the lease was executed in Utah it was not subject to Idaho law. Id. But the court found several subsequent agreements that occurred in Idaho that brought the lease within the purview of Idaho law. Id. The lessor of the sheep lost because they did not record their security interest as required by Idaho law. Id.


"It is not commonly understood that livestock leases in Idaho are perfected outside the UCC filing systems."
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The Pandemic and the Courts

Hon. G. Richard Bevan

In normal years at this time, these pages have hosted the transcripts of my predecessors’ State of the Judiciary addresses. But 2021 presents the ongoing and unique challenges of the pandemic, which demand a different narrative this year. It is a major understatement at this point to say these past 12 months have been unusual.

COVID-19 has been no less a crisis for the courts than for any other part of society. Thus, I am writing to explain what drove the Judicial Branch’s response to the pandemic. In this article I will also give an update on other happenings across Idaho’s courts and offer some insight into my goals and vision for our court system.

It is truly an honor to now serve you as Chief Justice of the Idaho Supreme Court. But I certainly could not have imagined the circumstances that face us as I prepared to assume this role. The pandemic has required some of the hardest decisions that I or any other judge have had to make. Throughout this experience, the Court has approached the matter with a most serious and sober eye. In making the difficult decisions the Court has faced during this last year, I am reminded of the words of Oliver Wendell Holmes, Sr., who said, “I find the great thing in this world is not so much where we stand, as in what direction we are moving . . . we must sail sometimes with the wind and sometimes against it — but we must sail, and not drift, nor lie at anchor.” The Court has endeavored throughout the challenges of the pandemic to sail steadfastly ahead, and not simply to drift.

Court hearings and trials carry significant COVID-19 risk, requiring that people gather closely together in one room for possibly hours at a time. Most people appearing in a courtroom, including litigants, their attorneys, and the members of the jury, are required to appear because a judge ordered them to be there. Contrast with personal decisions over which Idahoans have more control — whether to go shopping, see family, visit a restaurant — it becomes even more paramount that decisions to hold in-person court activities stem from the best possible science and carefully weigh the possible risk to participants’ health and safety.

Judges must now consider the specifics of spaces available for proceedings, including the size, shape, and ventilation of each courtroom in courthouses throughout 44 counties. They must consider the local incidence rate of COVID-19 and the specific risks of prolonged and close contact among participants.

The alternatives are not without their own potential harm. These decisions must also examine the effects of any delay on the rights of the parties seeking a resolution. All the while, we navigate an ever-
changing understanding of the dangers and the impact on available healthcare as the landscape of community spread rises and ebbs.

Given this, Supreme Court orders, such as our March 13, 2020, Response to COVID-19 Emergency or October 8, 2020, Emergency Reduction in Court Services and Limitation of Access to Court Facilities, were complex undertakings requiring close attention to the latest science and data. The Court consulted government and private-sector experts in health care and medicine. Throughout the year, we repeatedly conferred with epidemiologists and health system administrators and examined competing standards for topics such as the disease incidence rates at which jurors might safely gather.

The two orders cited previously show how our approach evolved. The first represented initial actions and precautions based on what was known about the emerging virus and reflected Gov. Brad Little’s state of emergency declared the same day. Over time the Court’s orders incorporated more detailed guidance; the Oct. 8 order addresses such topics as safety protocols for in-person hearings involving juveniles and guidelines for choosing to livestream a hearing. The Court’s February 3, 2021 order on resuming jury trials then adopted the guidance and science of all of the orders before it. Throughout, the Court sought to align its procedures with the demands of current events, including the state’s ability to keep pace with timely contact tracing.

While the Supreme Court set the stage, our guidance also had to support the seven judicial districts and local trial courts in their own implementations of safety rules and orders. Judges and court officials at each level of the system were on the front lines of this situation; it was vital that the Supreme Court swiftly give them the tools to maneuver through such intensely difficult scenarios.

Across the system, we ensured space for innovation and creative solutions. One example is in Ada County, where local officials set up kiosks at their fairgrounds for members of the public who needed to make remote appearances but did not have the devices or sufficient internet access to do so. Other counties have since followed their example, a sign of the court system’s dedication to ensuring access to any person filing a claim and seeking a remedy.

The pandemic posed large challenges for those served by guardians and conservators in this state. Monitoring coordinators, who are part of the Supreme Court’s Guardianship and Conservatorship program, successfully developed ways to evaluate the living environments of protected people over video without compromising the safety of anyone involved. Court staff have also played a key role in guiding our guardians and conservators on how to provide care when in-person visiting is limited.

There are numerous other examples of people stepping up to ensure Idaho’s courts remained open throughout the past year. I must acknowledge here my gratitude to the many who made this possible, from our steadfast court clerks to our judges and court staff, to the members of the Bar who ensured proper representation and participation for their clients amid these adjustments.

Many court functions can successfully be done remotely, but some proceedings can only occur in person. Thus, the largest negative effect of COVID-19 precautions on the courts has been delayed jury trials.

In my State of the Judiciary address I shared some sobering figures from our assessment of current delays. As of January 2021, the number of statewide case filings, whether civil or criminal, decreased by 10 percent since April 2020. In that same time, case closures decreased by 21 percent. The number of pending criminal cases increased by 22 percent since January 2020, and we have more than 40,000 criminal cases awaiting disposition. Finally, the average number of jury trials held throughout the state per month before the pandemic was about 197, while the average number now scheduled per month is 350.

Idaho’s courts have been unable to eliminate all negative effects caused by the pandemic, but we have sought to limit them. One example is removing bond and arrest requirements for certain traffic offenses and warrants, variations of which occurred at multiple judicial levels. This supported efforts across the state to lower jail populations, minimize COVID-19
transmission within jails, and minimize defendants being unnecessarily detained if their court dates were postponed.

The Court sought to make the best use of the tools we already had. Last spring’s sudden transition to remote hearings and online filings would not have been possible without investments the courts and Legislature made in modernizing our system through Odyssey. The Idaho Constitution also anticipated disruptions to the court system through “epidemic [or] pestilence,” and we turned to this clause allowing the Supreme Court to hear its arguments in a remote location.

We continue to advance other solutions. I shared some of these in my State of the Judiciary, including using senior and active judges to mediate cases and therefore reduce the number of pending cases and trials. Along with outfitting judges and court staff for remote work, we have distributed additional computer hardware to each of Idaho’s 44 counties to allow them to hold jury trials as soon as possible — even if those trials occur at locations outside a traditional courthouse.

The pandemic has only hastened important investments in technology and access across the judiciary. For example, in the initial response to reducing in-person court operations, one focus was how we could ensure those who needed an emergency civil protection order could apply for one without having to come to the courthouse.

Within two weeks of the first COVID-19 case in Idaho, the Court deployed an online, guided questionnaire that allows anyone with internet access to complete and file a petition for a civil protection order remotely. This capability has made the courts more accessible to the people of Idaho and will continue. We also expect that other innovations born of this time will carry forward to assist litigants and parties to obtain a “just, speedy and inexpensive determination of every action and proceeding.”

The pandemic understandably drew much of our attention this past year. I would be remiss, however, not to share other important examples of how we are working to serve Idahoans.

If you have not, I invite you to review our Judicial Branch annual report to the Legislature, which this year is hosted on its own website at annualreport.isc.idaho.gov. It includes overviews of key programs, links to key data across the judicial districts, and a resources tab with more detailed handouts on a variety of topics.

One of our most important ventures right now is a uniquely coordinated effort across Idaho’s three branches of government to improve this state’s mental health system. Sara Omundson, Administrative Director of Courts, co-chairs the Idaho Behavioral Health Council with Dave Jeppesen, Director of the Idaho Department of Health and Welfare. Together with representatives from across our government, including a district and a magistrate judge, they are steering the council toward completion of a strategic plan for developing timely services for Idahoans and improving outcomes for those in the system. Their plan is due this June; for those of you who represent clients in this area, I hope it will bring improvements.

We have also worked throughout the past year to increase transparency and understanding of the courts’ business. That included launching our Idaho Court Data website at courtdata.idaho.gov, which itself is one result of the Administrative Office of Courts’ Data and Evaluation team enhancing its reporting and analysis capabilities. That latter work will continue and includes a review of available data, evaluation of data input accuracy and consistency, focused educational opportunities to improve data collection, and an effort to augment the information available both internally and externally. This undertaking is critical to the Supreme Court’s efforts to use data-based evaluations in the administration of Idaho’s courts.

Just this January, the Court hired a court communications manager to better coordinate and provide information to stakeholders across the court system, including members of the Bar and to the public at large. It is of great importance to me during my time as Chief Justice to expand the public’s knowledge of what the courts do and I look forward to securing your help in better educating our citizens.

The Idaho Supreme Court has adopted new best-practice standards for state treatment courts and a related quality assurance plan will be applied across the state this spring. These procedures set appropriate levels of treatment and accountability to provide the best chance at positive results for court participants. The quality assurance standards also provide a baseline for evaluation and analysis of these courts’ results, using observation and feedback from both peers and Supreme Court staff — with the goal to foster and ensure these courts’ alignment with best practices.

Finally, I would be remiss not to mention a special anniversary this year. As described previously in these pages, January 11, 2021 marked 50 years since the creation of the magistrate division of our district courts. The Idaho State Bar provided key assistance in securing the constitutional amendment and other legislation that led to creating this division, which assumed all functions of the antiquated justices of the peace,probate judges, and municipal judges.

We have 97 magistrate judges across Idaho today — one in every county — involved in resolving misdemeanor criminal cases, small claims, family law, and supporting our treatment courts, among many other case types and proceedings. These judges play a pivotal role in their communities; we are proud of them and we thank them. We hope you will join us in celebrating them and this anniversary.

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Idaho Supreme Court Chief Justice G. Richard Bevan assumed leadership of the Court on January 1, 2021. He was appointed to the Court in 2017. Prior to that, he served a long career as an attorney and district judge, including four years as Twin Falls County prosecutor and eight years as administrative district judge for the Fifth Judicial District. He received his undergraduate and law degrees from Brigham Young University.

Endnotes
1. If interested, the text and video recording of the 2021 State of the Judiciary address may be accessed at the Idaho Supreme Court’s website: https://isc.idaho.gov/.
2. Idaho Const. art. V, § 8
3. I.R.C.P. 1(b); see also I.C.R. 2(a).
TRIAL TESTED

Keely Duke and Josh Evett are excited to announce the formation of their new firm.

Both partners are recognized as highly skilled, tenacious defenders of Idaho’s medical, business, and insured community. Keely and Josh have joined forces to create Idaho’s premier trial team.

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Idaho’s Focus on Lawyer Well-Being

Teresa A. Baker, Idaho State Bar
Program and Legal Education Director

The Attorney Well-Being Task Force (AWBTF) was formed in February 2020 by the Board of Commissioners of the Idaho State Bar to improve the well-being of the legal profession in Idaho. The Task Force brings various representatives from Practice Sections, committees, and practice groups together to investigate obstacles to well-being in the profession and identify resources to help attorneys, judges, law students, and related staff members not only survive but thrive in their professional and personal lives.

Idaho is one of the many states that has acted to support the full well-being of its members after the National Task Force on Lawyer Well-Being, a coalition of entities committed to catalyzing a movement to improve well-being in the legal profession, published a comprehensive report titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* in August 2017. The report spotlights a 2016 study of nearly 13,000 practicing lawyers which found that too many lawyers are not thriving.

The report identifies the problems and offers 44 concrete, actionable recommendations for stakeholders across the profession to support a lawyers’ full well-being. The report explains that the absence of illness is not the same thing as being fully well and it makes health and happiness recommendations as well as addresses the need to prevent and treat impairment.

The term well-being is defined as “a continuous process through which lawyers strive to thrive in all dimensions of their lives: emotional, occupational, intellectual, social, physical, and spiritual.”

The Idaho State Bar AWBTF members represent both public and private employers, large and small law firms, as well as all parts of the state, and include the following members:

- Julie Stomper, Chairperson
- Yvonne A. Dunbar, Boise
- Joseph N. Pirtle, Boise
- Douglas A. Werth, Boise
- Margaret H. Boggs, Ketchum
- Francis J. Zebari, Boise
- Camille A.B. Christen, Boise
- Hon. Darren B. Simpson, Blackfoot
- Andrea S. Hunter, Coeur d’Alene
- Jamal K. Lyksett, Moscow
- Larry C. Hunter, Boise
- Jamie C. Shropshire, Boise
- Caralee A. Lambert, Boise
- Teresa A. Baker, Boise

The Task Force thought it was important to start off its work by conducting an anonymous survey of all Idaho State Bar members...
members to determine how the Task Force can best serve the needs of members. The survey was disseminated in October 2020 and the response was impressive with 960 members taking the time to share their thoughts. A similar survey is currently in process for Idaho law students.

While the AWBTTF was not formed to address the issues presented by the COVID-19 pandemic, it began its work just about the time the pandemic hit Idaho. With the struggles that were evident in the first few months of the pandemic, specific questions were included in the survey. They centered on remote work, isolation, concern about financial security, the economic impact of the pandemic, and overall anxiety. The survey also asked about the participants’ well-being status, knowledge about access to well-being resources, and demographic information.

The survey results are currently being compiled by members of the committee and will be shared in the coming months. Additionally, the Task Force will be using the results to make recommendations for resources, educational opportunities, and even social functions for members of the Idaho State Bar to improve well-being.

We encourage you, your staff, and your loved ones to participate in the events and activities that will be held May 3rd through May 7th during Lawyer Well-Being Week. Each day of the week will focus on an element of well-being. Every day, participants will have at least three different suggestions for activities and education. The wheel, on the right, shows the well-being emphasis that will be focused on for each day of the week.

Visit the Attorney Well-Being page on the Idaho State Bar website for more information, the links to register, and for more resources as they are developed. If you have ideas for speakers, activities, or want to be involved, please contact one of the Task Force members or Teresa Baker at tbaker@isb.idaho.gov or by calling the Idaho State Bar office at 208-334-4500. We also encourage members to take advantage of the well-being CLE programs that are available at no cost on the Idaho State Bar’s on-demand CLE platform.

Teresa A. Baker is the Idaho State Bar and Idaho Law Foundation’s Program and Legal Education Director. She is the liaison to the Practice Sections, the Lawyer Assistance Program, the Idaho Academy of Leadership for Lawyers, the Attorney Well-Being Task Force, and she organizes continuing education courses and the Annual Meeting. Before joining the Idaho State Bar staff she was a longtime volunteer since being admitted in 1996.

Endnotes
32% of lawyers under 31 and 21% of all lawyers have a DRINKING PROBLEM

28% of lawyers struggle with DEPRESSION

19% of lawyers have symptoms of ANXIETY DISORDER

11% of lawyers have experienced SUICIDAL THOUGHTS

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Idaho Supreme Court
Oral Arguments for April 2021
02/12/2021

Monday, April 12, 2021 – BOISE
8:50 a.m. Elgee v. The Retirement Board ......................... #47846
10:00 a.m. Hilton v. Hilton ............................................. #47487
11:10 a.m. State v. Ahmed ............................................. #47521

Wednesday, April 14, 2021 – BOISE
8:50 a.m. Ada County v. Browning ............................... #47984
10:00 a.m. Off-Spec Solutions v. Transportation Inv. ........ #47940
11:10 a.m. State v. Cartwright ........................................ #47440

Friday, April 16, 2021 – BOISE
8:50 a.m. State v. Guzman ............................................. #48480
10:00 a.m. USA v. Gutierrez ......................................... #48454
11:10 a.m. State v. Gardner .......................................... #47242

Monday, April 19, 2021 – BOISE
8:50 a.m. Progressive Insurance v. Lautenschlager ......... #48018
10:00 a.m. Gangi v. DeBolt ......................................... #48003
11:10 a.m. Khurana v. IDHW ....................................... #46652

Idaho Supreme Court Calendar
Oral arguments held in Boise are now available to watch live streaming via Idaho Public Television’s Idaho Live at:
http://idahoptv.org/insession/courts.cfm
Please note, playback quality will depend on your Internet connection speed.
Press releases and schedules are posted as they are made available at https://isc.idaho.gov/.
Cases Pending (January 2021)

CIVIL APPEALS

Contract
1. Whether substantial and competent evidence supports the trial court's finding that the plaintiff breached the parties' contract by failing to obtain a change order for additional materials used in the construction project.

   McCarthy Corp. v. Stark Investment Group  
   Docket No. 47749  
   Supreme Court

Divorce, custody, and support
1. Whether the evidence supports the lower courts' determination that a portion of the "unknown disbursements" from wife's bank accounts was divisible community property and that husband was entitled to his community interest share of those disbursements.

   Swanson v. Swanson  
   Docket No. 48021  
   Court of Appeals

2. Whether the magistrate erred by re-characterizing an investment account opened with husband's sole and separate assets as community property.

   Herr v. Herr  
   Docket No. 47941  
   Supreme Court

Evidence
1. Whether the lower courts erred by finding the defendant's actions satisfied the "force" element of forcible detainer when it was undisputed that the defendant did not menace or threaten violence.

   Farms, LLC v. Isom  
   Docket No. 48012  
   Supreme Court

Post-conviction relief
1. Whether the trial court erred by granting the state's motion for summary dismissal and concluding that trial counsel's failure to impeach a witness with a prior inconsistent statement was neither deficient nor prejudicial as to the defendant's eluding conviction.

   Cangro v. State  
   Docket No. 48108  
   Court of Appeals

2. Whether the district court erred by concluding that the petitioner failed to present admissible evidence sufficient to raise an issue of material fact supporting the petitioner's claim that the trial court was racially biased against him.

   Gomez v. State  
   Docket No. 47923  
   Court of Appeals

Procedure
1. Whether the district court erred by applying the nullity rule and dismissing the case with prejudice rather than allowing amendment of the Complaint and relation back.

   Luck v. Rohel  
   Docket No. 47506  
   Supreme Court

CRIMINAL APPEALS

Due process
1. Whether the district court committed reversible error by declining to declare a mistrial after the nurse who examined the victim testified on cross-examination that the victim reported incidents of abuse other than those for which the defendant was on trial.

   State v. Gonzalez  
   Docket No. 47597  
   Court of Appeals

Evidence
1. Whether the district court erred by denying the motion for a new trial and ruling the defendant was barred by I.R.E. 606(b)(2) from interviewing individual jurors to determine whether the jury's verdict was influenced by racial animus.

   State v. Garcia-Ongay  
   Docket No. 47408  
   Supreme Court

2. Whether the district court abused its discretion by overruling the defendant's IRE 404(b) objection and permitting the state to cross-examine the defendant and present rebuttal evidence to show that he and the victim's mother had a premarital sexual relationship.

   State v. Davis  
   Docket No. 45586  
   Court of Appeals

3. Whether the district court abused its discretion by allowing the state's expert to testify generally about the combined effects of several intoxicating substances on an individual's ability to consent to sexual intercourse.

   State v. Oberg  
   Docket No. 47207  
   Court of Appeals

4. Whether the district court abused its discretion by concluding that the probable value of evidence that the defendant was a convicted felon who could not possess a firearm was not substantially outweighed by the danger of unfair prejudice in the defendant's trial for first-degree murder.

   State v. Wilson  
   Docket No. 47358  
   Court of Appeals

Sentence review
1. Whether the district court abused its discretion by failing to redline or remove irrelevant and prejudicial information from the presentence investigation report after ruling that it would do so.

   State v. Ohlson  
   Docket No. 47137  
   Court of Appeals

ADMINISTRATIVE APPEALS

Search and seizure – suppression of evidence
1. Whether the district court erred by denying the motion to suppress and concluding the defendant was not seized until after a drug dog had alerted on his parked vehicle.

   State v. Best  
   Docket No. 47829  
   Court of Appeals

2. Whether the district court erred by denying the motion to suppress and concluding the defendant's detention was supported by reasonable suspicion that the defendant was, or was about to be, engaged in unlawful conduct.

   State v. Alvarenga-Lopez  
   Docket No. 47914  
   Supreme Court

3. Whether the warrantless search of the defendant's purse was justified under the automobile exception where the defendant had removed the purse from the car before the officer developed probable cause to search the vehicle.

   State v. Schnakenburg  
   Docket No. 47489  
   Court of Appeals

Sentence review
1. Whether the district court abused its discretion by failing to redline or remove irrelevant and prejudicial information from the presentence investigation report after ruling that it would do so.

   State v. Ohlson  
   Docket No. 47137  
   Court of Appeals

Other
1. Whether the district court erred by affirming the administrative license suspension and holding that the officer's use of the phrase "show why" instead of the statutory language "show cause why" did not render the I.C. § 18-8002A advisory defective.

   Satter v. ITD  
   Docket No. 48120  
   Court of Appeals

Summarized by:  
Lori Fleming  
Supreme Court Staff Attorney  
(208) 334-2246
Donald K. Querna  
1945 – 2020

Donald Kitzinger “Kit” Querna died on July 3, 2020 as a result of metastatic pancreatic cancer. Kit was a devoted and loving husband, father, grandfather, brother, and friend. A business and estate planning attorney, he spent more than four decades serving businesses and families across Spokane and the Northwest. Kit is survived by his wife of 50 years, Christie, and their three daughters, Betsy Cliff, Katie Querna, and Emily Strizich. He is also survived by Betsy’s husband, Patrick, their sons, Charlie and Gus, Emily’s husband, Garrett, their daughter, Simone, and another child expected this fall. He loved each of his own and his daughters’ dogs, Maggie, Jake, Franc, Dublin, Willie, and Kaya as members of his family.

Kit adored watching his daughters grow into adulthood and was so often filled with wonder by their passions and interests, especially when they diverged from his own. A mentor to many during his life, Kit thrilled at being taught about the world by family, friends, and colleagues. Kit was born to Mel and Patty Querna on February 23, 1945 in Eureka, CA.

Kit was a proud graduate of Stanford University, where he earned a B.S. and M.B.A., Willamette University College of Law where he earned a J.D., and New York University School of Law, where he earned an LLM in taxation and served on faculty for one year. He also taught for many years as an adjunct professor in Gonzaga University School of Law’s tax program. Kit was privileged to practice business, tax, and estate planning law for four decades with Randall Danskin in Spokane. Kit was always grateful for his colleagues at the firm for their confidence and collegiality, and the trust of his corporate and personal clients.

Kit was at home in nature, especially in the mountains and streams of Idaho and western Montana where he and his wife, Christie, returned for annual fishing trips. He also enjoyed hiking trips with his daughters, fishing with friends, and teaching his grandchildren about the wonders of a trout stream and especially the joy of returning each fish to its watery home.

Joseph S. Stanzak  
1953 – 2021

Joe grew up in Michigan on the water where his passion for fishing was established. His family moved to Southern California where he pursued athletics – wrestling and playing tennis at Cal State Fullerton. A cowboy at heart, he found his way to Idaho. He graduated from the University of Idaho College of Law in 1984 and was a local attorney. Due to health concerns, he closed his practice but maintained his license for his many family and friends who needed advice.

Joe is survived by his wife, Denise, and children, Nick (Haylee), Alesha (Jeremy), Danielle (Nic), and Tasha (Luna); grandchildren, Sylvee, Charlee, Lily, Harold, and Benedict; his father, Ronald (Lorraine), and brother, David (Margo).
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Idaho Supreme Court Justice Roger Burdick to Retire

STATEWIDE – Justice Roger Burdick will retire from the Idaho Supreme Court on June 30, 2021, after a 47-year career that touched almost every part of the court system.

Justice Burdick has worked as a defense attorney, prosecutor, magistrate judge, district judge, and eventually led the state’s highest court as chief justice. For two years he presided over the Snake River Basin Adjudication, the multi-decade effort to confirm and clarify individual water rights across most of Idaho.

Throughout his career, Justice Burdick became known for his focus on transforming the quality of the court system for the benefit of the people of Idaho. He prioritized securing highly qualified candidates for judgeships and expanding continuing education for judges. He also worked to improve the administration and management of the courts, driving change through top leadership roles with the Idaho Magistrate Judges’ Association, Idaho District Judges’ Association, Idaho Judicial Council, and eventually the Idaho Supreme Court.

As a magistrate judge, he became the first magistrate member of the Idaho Judicial Council and elevated the representation of his peers within Idaho’s judicial administrative bodies, a notable part of the magistrate division’s evolution as it now celebrates its 50th anniversary.

Justice Burdick began his legal career in 1974 when he received his juris doctor degree from the University of Idaho College of Law. He worked as an attorney in Twin Falls, as a deputy prosecutor in Ada County, and then as a public defender for Camas, Lincoln, Jerome, and Gooding counties. In November 1980, he was elected prosecutor for Jerome County. Nearly one year later, he was appointed as magistrate judge for that same county.

Justice Burdick was appointed as a district judge in Twin Falls County in 1993 and became known for volunteering for challenging or sensitive cases — sitting in for an unavailable justice on two Supreme Court cases regarding the bidding system for state grazing leases. In 2001, he was assigned to preside over the Snake River Basin Adjudication and became the administrative district judge for the Fifth Judicial District.

Gov. Dirk Kempthorne appointed Justice Burdick in August 2003 to be the 53rd justice of the Idaho Supreme Court. Justice Burdick won re-election in 2004, 2010, and 2016; his current term would have lasted until January 2023. He recently completed his second term as chief justice, as chosen by his peers, and is currently vice chief justice of the five-member court.

Justice Burdick placed a priority on embracing the Supreme Court’s administrative role in Idaho’s unified court system — growing treatment courts, enhancing guardianship monitoring, improving the juvenile court system, and advocating for the resources to achieve such goals. He oversaw the adoption of new Rules of Procedure and proposed successful revisions to the Idaho Code of Judicial Conduct.

Across the breadth of his service, Justice Burdick said, he has been struck by the dedication and professionalism of Idaho’s judges, attorneys and court clerks. He thanked all those he has worked with throughout his career and his family for their support starting from his earliest years in Jerome.

In retirement, Justice Burdick will apply to serve as a senior judge, taking on periodic cases to help ease the workload across the judiciary. Justice Robyn Brody will become vice chief of the Idaho Supreme Court.

In accordance with the procedure for filling midterm vacancies, a new justice will be appointed by the governor to replace Justice Burdick from a list of two to four names provided by the Idaho Judicial Council. This justice will serve out the remainder of the unexpired term, which ends in January 2023. A nonpartisan election to elect a justice for the next six-year term will be held in May 2022.

Angstman Johnson announces promotion and new addition

BOISE – Angstman Johnson announces the promotion of Sheli Fulcher Koonts to partner and the addition of attorney Louis Spiker. Sheli handles cases in a variety of areas, including family law, estate planning, personal injury, family law mediation, and coparenting coaching. She earned her Juris Doctor at the University of Idaho College of Law in 2011, after obtaining degrees in molecular biology and forensic sciences from Northwest Nazarene College and Marquette University.

Louis’ practice emphasizes creditor’s rights, commercial litigation, and business transactions. Louis also practices in the areas of real estate, land use, and agriculture. He earned his Juris Doctor at the University of Idaho College of Law after obtaining a degree in economics from the University of Michigan.

Scholarships now available for Idaho State Bar Annual Meeting in July

STATEWIDE – Join the Idaho State Bar in Boise July 21st through the 24th for the 2021 Annual Meeting. The Idaho State Bar is offering a limited number of scholarships that include full registration and per diem up to $75 per day for travel and lodging. The scholarships are designed to provide assistance to those attorneys who, due to financial or professional circumstances, would otherwise be unable to attend. Consideration will be given to those attorneys who are attending the Annual Meeting for the first time.

As of the date of publication we are planning on holding the meeting in person if it is possible. All the proper COVID-19 protocols that are in effect at the time of the meeting will be in place for in-person meetings. If we are unable to hold the meeting in person, we will offer the CLE programs via live webcast and scholarships will be converted for webcast participation.

Apply today! Contact the Idaho State Bar Commissioner who represents your judicial district or Teresa Baker, Program and Legal Education Director, at (208)
Go Digital!
Desk Book Directory

STATEWIDE – The Idaho State Bar is beginning preparations for the 2021-2022 Desk Book Directory. We would like to extend a friendly reminder that information provided in the Desk Book Directory is readily available at any time on the Idaho State Bar website. Taking advantage of the digital resources is exceedingly more effective and efficient, as the information is updated on our website regularly year-round.

Please watch your email inboxes for the invitation to opt-out. If you have opted out previously, you do not need to opt-out again this year. All members who opt-out this year will be entered into a drawing for a $250 Visa gift card. By opting out this year, you will be permanently opted out going forward.

Nominations for the 2021 Idaho State Bar Commissioner election due April 6

SIXTH/SEVENTH DISTRICTS – Attorneys in the Sixth and Seventh districts will be electing a new representative to the Idaho State Bar (ISB) Board of Commissioners this spring. The new commissioner will replace Donald Carey, Idaho Falls. Pursuant to Idaho Bar Commission Rule 900, the new commissioner representing the Sixth and Seventh districts must reside in the Sixth district.

Commissioners of the Idaho State Bar are the elected governing body of the Bar; they serve for three (3) years, beginning on the last day of the ISB Annual Meeting following their elections. The Board of Commissioners is charged with regulating the legal profession in Idaho, which includes the testing, admission, and licensing of attorneys, overseeing disciplinary functions, and administering mandatory continuing legal education requirements.

Nominations must be in writing and signed by at least five (5) members of the ISB in good standing and eligible to vote in the districts. The Executive Director must receive nominations no later than the close of business on Tuesday, April 6. A nominating petition form may be obtained by calling the office of the Executive Director at (208) 334-4500 or on the ISB website at www.isb.idaho.gov. Ballots will be distributed to all members eligible to vote in the Sixth and Seventh districts on Monday, April 19. All ballots properly cast and returned to the ISB office will be counted by a Board of Canvassers at the close of business on Tuesday, May 4.

Ada County Clerk Phil McGrane recognized by Government Finance Officers Association

BOISE – Ada County Clerk and Idaho attorney Phil McGrane was recently recognized by the Government Finance Officers Association for his work on The Ada County Budget Explorer. This interactive tool was developed to provide increased transparency for citizens into the county’s budgetary process. McGrane and his team received the 2020 Award for Excellence in Government Finance in the category of “Exceptionally Well-Implemented Best Practice: Public Engagement in the Budget Process.”

Scanlan Griffiths announces new associate attorney

BOISE – Scanlan Griffiths Aldridge + Nickels is excited to announce that Jordan Reid has joined the firm as an associate attorney. Jordan is a 2017 graduate of the University of Nebraska College of Law.

After law school, Jordan relocated to Idaho where she has practiced in a wide variety of civil litigation areas including transportation, construction defect, premises liability, legal malpractice, employment practices, insurance defense, complex commercial litigation, and personal injury litigation.

Stoel Rives announces new leadership appointments in Boise

BOISE – Stoel Rives LLP announced that Christopher Pooser has been named Office Managing Partner of the firm’s Boise office as of February 1, 2021. As Office Managing Partner, Pooser is responsible for the day-to-day management of the office, supporting its business activities and recruiting efforts.

In his new role, Pooser succeeds Nicole C. Hancock, who was appointed to Stoel Rives’ Executive Committee on January 1, 2021.

Christopher Pooser, who joined Stoel Rives’ Boise office in 1998, has built a strong practice representing clients in commercial litigation matters in federal and state appellate courts. He argues before the Ninth Circuit Court of Appeals and Idaho Supreme Court and advises Stoel Rives attorneys on creating strong appellate arguments in California and the firm’s other offices. He is the co-founder and past chair of the Idaho State Bar’s Appellate Practice Section and was an editor and contributor to the Idaho Appellate Handbook (6th ed. 2019). He serves as an Appellate Lawyer Representative to the Ninth Circuit Judicial Conference and is a member of the Idaho Supreme Court’s Appellate Rules Advisory Committee.

As Office Managing Partner, Pooser will be involved in planning for the return of Stoel Rives’ attorneys and support personnel in Boise to the office post-pandemic, optimizing efficient use of the firm’s office space to provide a safe work environment for all staff. Stoel Rives’ Executive Committee is closely following vaccination developments to coordinate a safe and efficient return to in-office work.

Nicole Hancock initially joined the firm in 2003. She is a partner in Stoel Rives’ Litigation practice group and will continue her practice as a trial attorney, in addition to her new role on the Executive Committee. A highly respected litigator who has successfully first-chaired trials in federal and state courts, arbitration, and regulatory actions, Hancock also serves as outside general counsel for companies, using her prior experience as in-house counsel for a global seed company to provide legal services that mitigate against corporate risk and exposure. She served as Boise Office Managing Partner from 2015 to 2020.
Federal Defender Services of Idaho Announces Charles Peterson as new Executive Director and Federal Public Defender

BOISE – The Federal Defender Services of Idaho (FDSI) is pleased to announce that it has hired prominent criminal defense attorney Charles (Chuck) Peterson as its new Executive Director. Mr. Peterson succeeds Samuel Richard “Dick” Rubin, who retired after more than 25 years and will now serve as one of the organization’s 13 volunteer board members.

Mr. Peterson brings to the organization more than three decades of criminal defense experience at the state and federal levels, including the high-profile acquittals of the Ruby Ridge defendants and Sami Omar Al-Hussayen, a University of Idaho graduate student charged with federal terrorism offenses.

Mr. Peterson has a law degree from Gonzaga University and began his practice as a Judge Advocate General in the United States Army. He has been in private practice in Boise since 1985 and during that time, he has frequently accepted appointments from the federal court to represent indigent defendants as part of the Criminal Justice Act Panel. He has trained and mentored lawyers across the state. He is a member of the Idaho Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers, and he has numerous professional honors, including Martindale Pre-Eminent AV from 1992 to present and Best Lawyers in America (Criminal Defense) from 2008 to present.

Mr. Peterson was selected as Idaho’s Federal Public Defender by its board of directors after a nationwide search. Mr. Peterson assumed his duties with FDSI on November 1, 2020. He will oversee a staff of more than 30 attorneys, investigators, paralegals, and support staff. He will also continue to carry a caseload and frequently appear in federal court. FDSI is a nonprofit, Community Defender Organization for the District of Idaho with offices in Boise and Pocatello. In addition to the trial unit, FDSI has a capital habeas unit in the Boise office.

FDSI is organized under 18 U.S.C. § 3006A(g)(2)(B) and represents indigent persons accused of criminal offenses in federal court as well as persons under death sentences, mainly in Idaho but also in other states. FDSI is independent from the local federal judiciary and funded by a sustaining grant awarded by Congress under the Criminal Justice Act. A 13-member board of directors oversees the work of the organization.

Johanna Kalb named Dean of University of Idaho College of Law

MOSCOW – Johanna Kalb, law faculty from Loyola University and Yale graduate, has been named the next dean of the University of Idaho College of Law. She will begin in May.

Kalb has extensive experience in managing teams and building consensus. She serves as the associate dean of administration and special initiatives at Loyola University New Orleans College of Law. She has a bachelor’s degree from Stanford University, a master’s degree in international relations from Johns Hopkins University School of Advanced International Studies, and a Juris Doctor from Yale.

She is a published scholar as well as a fellow in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an academic fellow of the Pound Civil Justice Institute.

Kalb replaces Jerrold “Jerry” Long, who has served as term dean for three years. Long will return to his faculty position with the college.

Hepworth Holzer welcomes new attorney

BOISE – Hepworth Holzer, LLP is pleased to welcome Andrew La Porta to our team. Andrew spent the past three years working with some of Idaho’s top insurance defense attorneys at two of Boise’s premier defense firms—Elam & Burke, P.A. and Powers Farley, P.C. We appreciate the fine training he has received from our friends at those firms.

Andrew received his undergraduate education from Brigham Young University Idaho and his legal education at the University of Utah S.J. Quinney College of Law. He is licensed to practice in both Idaho and Utah. An Idaho native, Andrew has a proven commitment to his clients and the citizens of Idaho. We look forward to our clients reaping the benefit of his skills.

Idaho State Bar members among those honored as 2021 Icons

STATEWIDE – In addition to our very own Diane Minnich, four Idaho State Bar members have been honored by the Idaho Business Review as 2021 Icons. This award presented by the Business Review honors dedicated community members who have demonstrated a track record of leadership, professional accomplishments, community service, and vision. Wéll like to congratulate Dave Bieter, Project Manager at Gardner Company and former Mayor of Boise, Bart Davis, United States Attorney for the District of Idaho, Dennis Johnson, retired CEO of United Heritage Financial Group, and Ben Ysursa, former Idaho Secretary of State.

Have a job opening? Looking for a job?

The Idaho State Bar has job postings on its web site. Posting is free and easy. Visit isb.idaho.gov.
Hawley Troxell, Idaho’s premier law firm, is seeking an attorney to join its thriving Estate Planning/Business practice group in our Pocatello office.

Applicants must have a minimum of 3 years of experience, excellent references, strong writing and verbal communication skills. EOE.

Please complete an application and submit a cover letter and resume through our website: hawleytroxell.com/careers/application-form-attorneys
March

10-11  Fourth District Bar Spring Case Review  
       6.0 CLE credits

19  Big Data & Briefs:  
    An Introduction to Law & Corpus Linguistics  
    3.0 CLE credits

26  CLE Idaho  
    1.0 CLE credit

April

16  Handling Your First or Next Medical Malpractice Case

23  Child Protection Section Annual Meeting and Conference

28  Lawyer Ethics and Investigations For and Of Clients

For more information and to register, visit [www.isb.idaho.gov/CLE](http://www.isb.idaho.gov/CLE).
UBS provides a powerful integration of structured settlements and wealth planning for you and your clients.

By integrating structured settlements with one of the world’s leading wealth management firms, your clients can now receive unbiased advice and long-term planning to help secure their financial needs now and in the future. With over 7,000 Financial Advisors in 350 offices across the country, we stand ready to serve you.

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- Court controlled accounts
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- Trust and estate planning
- Life insurance and long-term care
- Banking services

For more information on the capabilities of Vasconcellos Investment Consulting at UBS, or for a second opinion on your current wealth management strategy, please contact:

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