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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 319776

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

KAY L. PRUCZINSKI, a single person, and
RICKY BELL, a single person,

Appellants,

v.

ALLEN ASHBY and JENNIFER ASHBY, husband and wife,
and the marital community comprised thereof,

Respondents.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Plaintiffs¹ and Idaho residents Kay Pruczinski² and Ricky Bell³ brought this action in Spokane County Superior Court against Idaho State Police Trooper Allen Ashby,⁴ an Idaho resident. (CP 3-9.) These claims stem from his traffic stop of Pruczinski for suspected impaired driving and his subsequent arrest of her. (CP 63-67.) Trooper Ashby filed a motion to dismiss pursuant to CR 12(b)(1) and CR 12(b)(2) contending that the Washington courts lacked subject matter and personal jurisdiction over him. (CP 39.) In the alternative, Ashby requested that Washington decline jurisdiction based on the principles of comity. The trial court granted dismissal pursuant to CR 12(b)(2). Pruczinski appeals this dismissal.

II. ASSIGNMENTS OF ERROR

The Superior Court held that subjecting Trooper Ashby to personal jurisdiction did not comport with the notions of fair play and due process. It accordingly granted his motion to dismiss pursuant to CR 12(b)(2). CP 222-

¹ Plaintiffs are collectively referred to herein as “Pruczinski.”

² Hereinafter “Pruczinski.”

³ Hereinafter “Bell.”

⁴ Hereinafter “Trooper Ashby” or “Ashby.”

223; RP 27. Contrary to Pruczinski's assignment of error, the Superior Court did not err in rendering this decision. Furthermore, the Superior Court made no determination as to which state's laws would apply to the merits of Pruczinski's claims. Instead, the Court correctly determined that it did not have personal jurisdiction over Trooper Ashby. Pruczinski's assignment of error that she made a prima facie showing of the requisite elements to establish long-arm jurisdiction is without basis as is the assignment of error that the Court based its dismissal on a choice of law determination.

III. STATEMENT OF THE CASE

Both subject matter and personal jurisdiction are based on the facts and circumstances of each specific case, and the facts surrounding each case must be reviewed in order to determine jurisdictional questions. *Tyee Constr. Co. v. Dulien Steel Prods., Inc.*, 62 Wn.2d 106, 381 P.2d 245 (1963). Pruczinski's Statement of the Case contains improper argument, misstatements of fact, and facts that are not in evidence. Therefore, Ashby provides this Statement of Facts.

Pruczinski and Bell, residents of Idaho, filed this tort action in Spokane County Superior Court on April 26, 2012, against Allen Ashby, who

is an Idaho State Police trooper, and his wife,⁵ both of whom are residents of Idaho. CP 23; CP 30. The suit arises from a traffic stop and subsequent arrest of Kay Pruczinski by Trooper Ashby while he was on duty on April 30, 2010. CP 41, 63-64.

On April 30, 2010, at approximately 11:45 p.m., Ashby was on patrol in a marked Idaho State Police patrol car westbound on Interstate 90 (I-90) in a construction zone in Idaho near the state line. CP 41, 63. He observed a vehicle in front of him weaving back and forth in its lane. CP 41, 63. He followed the vehicle and observed it take Exit 299 at the Washington/Idaho state line without using a turn signal. CP 41, 64. After exiting, the vehicle turned south, swinging wide and driving across the fog line onto the shoulder. CP 41, 64. As he continued to follow the vehicle, it drifted across the double yellow line into the oncoming lane of travel on several occasions while navigating the corners of the road on which it was traveling. CP 41, 64. After the vehicle turned onto North Idaho Road in Idaho, it sped up to 44 m.p.h. in a posted 35 m.p.h. zone. CP 41, 64. Ashby turned on his overhead patrol lights and the vehicle pulled to the shoulder of the road. CP 41, 64. Ashby

⁵ Mrs. Ashby, who was a named defendant in the action, filed a motion to dismiss the complaint as to her pursuant to CR 12(b)(6). (CP 39.) Pruczinski stipulated to this dismissal and an order dismissing her was entered on September 11, 2013. CP 220-221.

suspected the driver was potentially impaired because of the poor driving patterns he had observed. CP 41, 65.

When Trooper Ashby approached the vehicle, which had dark, tinted windows, he noted the female driver was wearing sunglasses, which raised his suspicions that she did not want him to see her eyes. CP 41, 64-66. Despite several requests from Ashby, Pruczinski refused to roll her window down more than an inch, precluding Trooper Ashby from seeing completely into the vehicle. CP 41, 65. Pruczinski refused repeated requests to roll down her window or to step out of the vehicle. CP 41, 65-66. From his years of experience, Ashby believed this behavior to be common to alcohol-impaired drivers trying to conceal the odor of alcohol. CP 41, 65-66. At this time Pruczinski was acting hysterical, yelling and demanding a female officer. CP 42, 65-66. Ashby saw Pruczinski reach to her right for something but was unable to see what she was reaching for and he took cover behind the "A" pillar of her vehicle. CP 42, 65-66. As he shined his flashlight through the windshield, he saw Pruczinski reach into a purse in a furtive manner and feared she was retrieving a weapon. CP 42, 65-66. He again ordered her out of the vehicle, but she refused. CP 42, 65-66. He then broke out the driver's side window with his asp and secured her left arm. CP 42, 66. She continued

to refuse to get out of the vehicle, so he unlocked the door, reached in to unclasp her seatbelt, opened her door, and removed her from the vehicle. CP 42, 66.

Because Pruczinski continued to resist once Trooper Ashby removed her from the vehicle, he handcuffed her, patted her down, and placed her in his patrol car. CP 42, 66. He then transported her to Kootenai County Jail where she was booked into custody. CP 42, 63, 67.

IV. PRUCZINSKI'S COMPLAINT

As to jurisdiction, Pruczinski's amended complaint (CP 22-28) alleges that:

- Pruczinski, Bell and Ashby are all residents of Idaho;
- Ashby is an Idaho State Police trooper;
- The acts of April 30, 2012, which form the basis of the complaint, occurred in Spokane County, Washington.

Although Trooper Ashby submits that the traffic stop occurred in the State of Idaho, Pruczinski alleges that the stop occurred in the State of Washington. In a CR 12(b)(1) motion, no presumption of truthfulness attaches to the allegations of the complaint and the Court must presume it lacks jurisdiction until Pruczinski establishes jurisdiction. *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). In a CR 12(b)(2)

motion, facts are taken in a light most favorable to Pruczinski. For purposes of the CR 12(b)(2) motion only, Ashby assumes the traffic stop and subsequent arrest occurred on the Washington side of the border road.

The remainder of Pruczinski's amended complaint consists of conclusory statements and allegations regarding Pruczinski's claim, i.e., Ashby's lack of authority to stop Pruczinski, his tortious conduct, and the property damage and injuries claimed by Pruczinski and Bell. The merits of these claims are not intertwined with jurisdictional issues, were not germane to jurisdictional questions before the Superior Court, and were not addressed by Ashby in the motion to dismiss.

V. JUDICIAL NOTICE ON APPEAL

ER 201(b)(1) permits a court to take judicial notice of facts generally known within its territorial jurisdiction. An understanding of the geographical locations discussed herein is helpful in analyzing the issues. Ashby requests the Court of Appeals take judicial notice that: (1) On the date of the incident, Exit 299 was the first exit on Interstate 90 west of Exit 2 in Idaho; (2) Exit 299 is near the Washington/Idaho state line; and (3) North Idaho Road travels south from I-90 through both Washington and Idaho. Attached hereto is a

Rand-McNally map and a map from the Spokane County SCOUT website depicting this roadway. (*See* Exhibit No. 1.)

VI. STANDARD OF REVIEW

Ashby filed a motion to dismiss pursuant to CR 12(b)(1) and CR 12(b)(2) contending that the Washington court lacked both subject matter and personal jurisdiction or that Washington should decline jurisdiction based on the principles of comity. (CP 39-60.) The trial court reviewed only the pleadings, briefs and argument of counsel in reaching its determination that exercising personal jurisdiction over Ashby would be not be fair and did not comport with due process. RP 26:21-23. It accordingly granted Ashby's motion to dismiss pursuant to CR 12(b)(2). CP 222-223.

The Court of Appeals reviews a superior court's jurisdictional ruling de novo when the underlying facts are not disputed. *MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991). The trial court's findings of the underlying facts as to jurisdiction are reviewed by the same deferential standard that applies to other factual findings. *See Schoenberg v. Exportadora de Sal, S.A. de C.V.*, 930 F.2d 777, 779 (9th Cir. 1991) (upholding factual findings underlying a jurisdictional issue because they were not clearly erroneous); *Bruce v. United States*, 759

F.2d 755, 758 (9th Cir. 1985) (holding that trial court's factual findings on the jurisdictional issue must be accepted unless they are clearly erroneous, but that the ultimate legal conclusion is subject to de novo review). The Court of Appeals may affirm the trial court on any alternative ground that the law and the record adequately supports. *Mudarri v. State*, 147 Wn. App. 590, 600, 196 P.3d 153, 160 (2008).

VII. ARGUMENT

A. SUMMARY OF ASHBY'S POSITION

Washington jurisdiction over Ashby violates due process and is inconsistent with the principles of comity. This is an action brought by Idaho residents against an Idaho resident/Idaho state employee for claims while exercising his duties as an Idaho State Police trooper. Ashby did not purposely direct his activities at either Washington or its residents and he could not reasonably have expected to be forced to defend an action in Washington for his stop and arrest of Pruczinski. The Superior Court correctly held that extending long-arm jurisdiction over Idaho resident Ashby would offend the notions of fair play and substantial justice and would violate due process. RP 27:11-13. This decision was correct and should be affirmed.

Alternatively, the Court of Appeals is permitted to affirm the dismissal based upon the principles of comity.

B. PRUCZINSKI'S ASSIGNMENT OF ERROR NO. 1 IS NOT SUPPORTED BY AUTHORITY AND SHOULD NOT BE CONSIDERED ON APPEAL

Pruczinski argues that the Superior Court made a choice of law determination and that this error warrants reversal of the dismissal. The Superior Court made no determination as to which state's laws apply to this action. However, even if this were true, Pruczinski fails to provide any relevant legal authority in support of her assignment of error. Her brief contains argument without any meaningful analysis of applicable or supportive legal authority. RAP 10.3(a)(5) requires parties to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." Arguments not supported by pertinent authority or meaningful analysis need not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficiently argued claims); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (arguments not supported by adequate argument and authority).

Pruczinski cites only one authority in support of the argument that a choice of law determination was the basis for the dismissal – *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 744 P.2d 1032 (1987). *Haberman* involved the application of the Washington State Securities Act in an action where the out-of-state parties were already determined to be under this State's jurisdiction. *Id.* at 134. This case is clearly distinguishable. Ashby's motion to dismiss concerns whether Washington can extend jurisdiction over him as an Idaho resident. Pruczinski fails to provide any meaningful analysis as to why *Haberman* supports the argument that a choice of law determination was inappropriately applied by the Superior Court to dismiss the action against Ashby.

The purpose behind RAP 10.3(a)(5) and related rules is to enable the court and opposing counsel to efficiently and expeditiously review the accuracy of the factual statements and the relevant legal authority in the briefs. *Hurlbert v. Gordon*, 64 Wn. App. 386, 400, 824 P.2d 1238 (1992). Citations to legal authority should relate to the issues on review and should support the proposition for which such authority is cited. *Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 305, 991 P.2d 638 (1999). "Without adequate, cogent argument and briefing, this court should not

consider an issue on appeal." *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 160,795 P.2d 1143 (1990) (citing *Saunders*, 113 Wn.2d at 345).

C. LEGAL STANDARDS FOR CR 12(b)(1) AND 12(b)(2) MOTION TO DISMISS.

A court may determine personal jurisdiction before subject matter jurisdiction. *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574 (1999) ("there is no unyielding jurisdictional hierarchy.") When a Washington court rule is substantially similar to a present Federal Rule of Civil Procedure, a court may look to the interpretation of these federal rules for guidance. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 806, 292 P.3d 147 (2013).

In a Rule 12(b)(2) motion challenging a court's personal jurisdiction, the court has discretion to rely on written submissions. *Outsource Servs.*, 172 Wn. App. at 807. In a Rule 12(b)(1) motion, a court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts. *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995); *see also McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). Included as an exhibit to Ashby's memorandum in support of his motion to dismiss was a copy of his report which indicated that Ashby believed he was in Idaho at the time of the traffic stop. Although it was

within the wide discretion of the Superior Court to review “affidavits [and] other documents” to determine jurisdiction, it chose not to do so.

Ashby’s Rule 12(b)(1) motion submits that subject matter jurisdiction for an action against an Idaho employee lies exclusively with the Idaho District Courts. Regardless of subject matter jurisdiction, Ashby submits that Washington did not have personal jurisdiction over him.

Unlike the strict limitations involved in a Rule 12(b)(6), a Rule 12(b)(1) motion is considered a "speaking motion" and can include references to evidence extraneous to the complaint without converting it to a Rule 56 motion. Frequently, courts look to Rule 56 for guidance in ruling upon evidentiary matters under 12(b)(1). *Exchange Nat'l Bank v. Touche Ross & Co.*, 544 F.2d 1126, 1131 (2nd Cir. 1976). The primary difference is not in the procedures used but in the effect the ruling will have upon the parties: a dismissal under 12(b)(1) allows for the possibility of repleading the action to bring it within the jurisdiction of the court. A grant of summary judgment resolves the issue on the merits and thus is with prejudice. *Wheeler v. Hurdman*, 825 F.2d 257, 259 (10th Cir. Colo. 1987) (internal citations omitted). *See also*, J. Moore & J. Lucas, *Moore's Federal Practice* para. 12.07[2.-1] (1986); *Timberlane v. Bank of America*, 549 F.2d 597, 601-03

(9th Cir. 1976) ("*Timberlane I*"). The same may be said of a dismissal under a CR 12(b)(2) motion – it is not a motion on the merits and the dismissal allows for the possibility of repleading the action to bring it within the jurisdiction of the proper court.

The U.S. Supreme Court in *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998), held that:

Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it. The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.

See Steel Co., 523 U.S. at 94-95 (internal quotations marks and citations omitted).

The Superior Court made no ruling as to any disputed facts nor as to the merits of Pruczinski's claims. Accordingly, the Superior Court's granting of Ashby's motion to dismiss does not preclude Pruczinski from re-filing this action in the proper court in Idaho.

D. SUBJECT MATTER JURISDICTION.

Subject matter jurisdiction involves the nature of the cause of action and the relief sought. *Silver Surprise, Inc., v. Sunshine Mining Co.*, 74 Wn.2d 519, 445 P.2d 334 (1968). The nature of a claim for relief is determined by the facts alleged in the complaint and as adduced thereunder and by the relief requested. *Id.* The question of subject matter jurisdiction is a matter of law. *Lewis v. Bours*, 119 Wn.2d 667, 669, 835 P.2d 221 (1992). A party may challenge subject matter jurisdiction at any time, and a judgment entered by a court lacking subject matter jurisdiction is void. *J.A. v. State*, 120 Wn. App. 654, 657, 86 P.3d 202 (2004). Once a defendant objects to a lack of subject matter jurisdiction, a plaintiff bears the burden of establishing jurisdiction. *Access Rd. Builders v. Christenson Elec. Contracting Eng'g Co.*, 19 Wn. App. 477, 576 P.2d 71 (1978).

"Unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency, and in doing so rely on affidavits or any other evidence properly before the court." *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). Thus, the existence of disputed material facts will not preclude a trial court from evaluating for itself the merits of jurisdictional claims. *Id.*

In fact, a court may consider extrinsic evidence to determine whether subject matter jurisdiction exists and may resolve factual disputes if necessary. *Thornhill Publishing Co. v. General Tel & Elect.*, 594 F.2d 730, 733 (9th Cir. 1979); *see also* FRCP 12(b)(1). More importantly, because a plaintiff bears the burden of establishing subject matter jurisdiction, no presumption of truthfulness attaches to the allegations of the complaint and a court must presume it lacks jurisdiction until the plaintiff establishes jurisdiction. *Stock West*, 873 F.2d at 1225. Where subject matter jurisdiction is lacking, dismissal under Rule 12(b)(1) is mandated. *Mendoza v. Neudorfer Eng'rs, Inc.*, 145 Wn. App. 146, 149, 185 P.3d 1204 (2008).

As articulated in *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 254 P.3d 818 (2011):

Where one state resident sues another in tort, the superior courts of Washington State have subject matter jurisdiction. See CONST. art. IV, § 6 ("[t]he superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court").

Williams, 171 Wn.2d at 730. If a matter is exclusively vested in some other court, another court cannot assume jurisdiction. *Id.*

Actions against the State of Idaho is governed by Idaho Code Title 6, Chapter 9 - Tort Claims Against Governmental Entities. Jurisdiction for tort

claims against the State of Idaho and its employees lies exclusively in the

District Courts of the State of Idaho pursuant to Idaho Code § 6-914:

The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Idaho rules of civil procedure insofar as they are consistent with this act.

Idaho Code § 6-914.⁶

Ashby was an Idaho state employee, specifically an Idaho State Police trooper, on duty on April 30, 2012. Regardless of how Pruczinski couches the complaint allegations, this is an action against an employee of the State of Idaho. By filing this action in Washington and omitting any reference to the fact that Pruczinski's allegations arise from a traffic stop by an Idaho State police trooper, Pruczinski has circumvented the requisite Idaho statutes for bringing a tort action against an Idaho state employee. To construe Washington's constitution to permit this result affords nonresident plaintiffs a forum to work an injustice upon the State of Idaho and its employee. This is especially true when there was an specific forum prescribed by an Idaho statute.

⁶ Exhibit No. 2 - Idaho Code § 6-914.

E. PERSONAL JURISDICTION.

1. Even If Subject Matter Jurisdiction Exists, There is No Personal Jurisdiction.

Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Outsource Servs.*, 172 Wn. App. at 806. Where the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. Cal. 2004). However, mere “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004); accord *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Pruczinski argues that “Idaho has nothing to do with this litigation.”⁷ In fact, the State of Idaho is woven throughout every facet of this lawsuit. It is a claim brought by Idaho residents against an Idaho resident who was on duty for an Idaho state agency at the time of the alleged incident. Trooper Ashby first observed the Pruczinski/Bell vehicle on I-90 in Idaho. He observed traffic violations in Idaho. The vehicle was an Idaho vehicle. He

⁷ Appellants’ Brief, pg. 16.

stopped the vehicle in what he believed to be Idaho. The only connection with Washington is Pruczinski's claim that the stop occurred on the Washington side of a state border road. This contact is too attenuated to establish personal jurisdiction over Trooper Ashby.

Long-arm jurisdiction relates to the question of whether a resident of another state can be forced to come to the state where the lawsuit was filed to defend against the lawsuit. "In this state, when measuring the rights of such out-of-state residents against the factual situation in his case, the length and grasping power of the "long arm" statute process must be limited by both the statutory provisions of RCW 4.28.185 and also by the defendant's constitutional rights to due process as currently defined in the highest court's decisions." *Callahan v. Keystone Fireworks Mfg. Co.*, 72 Wn.2d 823, 835, 435 P.2d 626 (1967). Thus, existence of personal jurisdiction requires a sufficient connection between the defendant and the forum state to make it fair to require defense of the action in the forum state. For a state to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum state. *Walden v. Fiore*, 134 S. Ct. 1115, 1121-1122, 188 L. Ed. 2d 12, 20 (2014). Contrary to Pruczinski's claims, Ashby did not purposefully create a substantial

connection with Washington sufficient to extend personal jurisdiction over him.

2. Personal Jurisdiction Under the Long-Arm Statute is Not Proper.

The analysis of personal jurisdiction under a long-arm statute involves two separate issues: (1) does the statutory language purport to extend jurisdiction, and (2) would imposing jurisdiction violate constitutional principles. *Werner v. Werner*, 84 Wn.2d 360, 364, 526 P.2d 370 (1974) (long-arm jurisdiction is intended to operate "to the full extent allowed by due process except where limited by the terms of the statute"). Statutes authorizing service on out-of-state parties are in derogation of common law personal service requirements and are strictly construed. *Hatch v. Princess Louise Corp.*, 109 Wn.2d 107, 177, 744 P.2d 1032 (1987).

RCW 4.28.185, the long-arm statute, states:

- (1) Any person, whether or not a citizen or resident of this state, who ... does any of the acts in this section enumerated, thereby submits said person ... to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
...
- (b) The commission of a tortious act within this state;
...
- (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an

action in which jurisdiction over him or her is based upon this section.

RCW 4.28.185(1)(b) and (3).

Solely for purposes of the motion to dismiss, Ashby accepted Pruczinski's allegation that Ashby's traffic stop and the subsequent arrest of Pruczinski occurred on the border road between Idaho and Washington and that the actual place where the stop occurred may have been in Washington. However, Ashby contends that viewing Pruczinski's allegation that the stop occurred in Washington in a light most favorable to her is insufficient to meet the requirement under the long-arm statute that her claim arose from a purposeful act in the forum state.

In *Tyee*, 62 Wn.2d at 115-16, the Court set out three criteria which should be applied in viewing the background of facts in each case against the rights of the nonresident defendant. These are: (1) The nonresident defendant must purposefully do some act in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the

forum state afforded the respective parties, and the basic equities of the situation. The Court in *Callahan* summarized these requirements as: Criterion (1) is a capsulized statement of the statutory requirements set out in RCW 4.28.185(1) (a) and (b); Criterion (2) expresses the limitation set out in RCW 4.28.185(1) and (3); and Criterion (3) is not based on anything in the statute, but is an attempt to make less vague the factual considerations which may have weight with a court in determining whether the nonresident's constitutional right to due process of law are met. *Callahan*, 72 Wn.2d at 835.

3. Ashby's Right to Due Process

Jurisdiction under the long-arm statute requires more than the mere allegation of a tortious act within the State of Washington. The requisite elements of due process must also be met, which Pruczinski fails to do. In the three-part test cited in *Tyee* and discussed in *Callahan*, a plaintiff has the burden of establishing the first two prongs of the test. *Mattel, Inc. v. Greiner and Hausser GmbH*, 354 F.3d 857, 863 (9th Cir. 2003). The defendant bears the burden with respect to the third prong. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

a. Ashby Did Not Purposefully or Expressly Aim His Conduct at Washington or its Residents.

The first criteria of the three-part test in analyzing whether personal jurisdiction comports with Ashby's rights to due process requires Pruczinski to establish that Ashby's conduct was purposefully and expressly aimed at Washington or its residents. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way. *Walden v. Fiore*, 134 S. Ct. at 1125. Due process requires that a defendant be forced into court in a forum state based on his own affiliation with the state, not based on the "random, fortuitous, or attenuated" contacts he made by interacting with other persons affiliated with the state. *Id.* at 1123. On the date of the Pruczinski incident:

- Ashby was on duty as an Idaho State Police trooper in an Idaho State Police car;
- Ashby was on patrol on westbound I-90 in Idaho;
- Ashby observed the Pruczinski vehicle on I-90 in Idaho;
- Ashby observed violations of Idaho traffic laws by Pruczinski on Idaho roads;
- The Pruczinski car had Idaho license plates;

- Ashby ultimately stopped Pruczinski in what he believed to be Idaho.

Pruczinski submits that the actual stop occurred in Washington and thus the interaction after the stop occurred in Washington. Notwithstanding Pruczinski's allegations, any connection between Ashby and the State of Washington is too attenuated to establish personal jurisdiction.

For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case. First, the relationship must arise out of contacts that the "defendant himself" creates with the forum State. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). **Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.**

...

Put simply, however significant the plaintiff's contact with the forum may be, those contacts cannot be "decisive in determining whether the defendant's due process rights are violated." ...

Second, our "minimum contacts" analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. ... "However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power of him." ... Accordingly, we have upheld the assertion of jurisdiction over defendants who have purposefully "reach[ed] out beyond" their State and into another ...

Walden v. Fiore, 134 S. Ct. at 1122 (emphasis added).

“These same principles apply when intentional torts are involved. In that context, it is likewise insufficient to rely on a defendant’s ‘random, fortuitous, or attenuated contacts’ or on the ‘unilateral activity’ of a plaintiff.” *Id.* at 1123.

The purposeful availment prong may be met if a defendant’s conduct was **purposefully and expressly aimed** at Washington. “Express aiming” was discussed by the Ninth Circuit when it analyzed the *Calder* effects test in *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) overruled in part on other grounds by *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) (en banc). The Court held that:

In *Calder*, the Supreme Court held that a foreign act that is both aimed at and has effect in the forum state satisfies the purposeful availment prong of the specific jurisdiction analysis. To meet the effects test, the defendant must have (1) committed an intentional act, which was (2) **expressly aimed at the forum state**, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state. *See Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998). Subsequent cases have struggled somewhat with *Calder’s* import, recognizing that the case cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction. We have

said that there must be "something more," but have not spelled out what that something more must be. ...

We now conclude that "something more" is what the Supreme Court described as "express aiming" at the forum state. *See Calder*, 465 U.S. at 789. **Express aiming is a concept that in the jurisdictional context hardly defines itself. From the available cases, we deduce that the requirement is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state. . . .**

Subsequent cases from this circuit bear out the conclusion that "express aiming" encompasses wrongful conduct individually targeting a known forum resident.. . .

The presence of individualized targeting is what separates these cases from others in which we have found the effects test unsatisfied.

Bancroft & Masters, Inc., 223 F.3d at 1086 (emphasis added).⁸

⁸ *Yahoo! Inc.*, 433 F.3d at 1206-1207, in overruling *Bancroft* in part held that:

We take this opportunity to clarify our law and to state that the "brunt" of the harm need not be suffered in the forum state. If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state.

The concurring opinion in *Yahoo!* is instructive in its discussion of express aiming:

An intentional act aimed exclusively at a location other than the forum state, which results in harm to a plaintiff in the forum state, does not satisfy the "express aiming" requirement under *Calder*. In *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 799 (9th Cir. 2004), an Ohio car dealer ran an advertisement in the Akron Beacon Journal that featured Arnold Schwarzenegger as "the terminator" without first seeking Schwarzenegger's permission. We held that the advertisement, though it wrongfully depicted Schwarzenegger, a California resident, "was expressly aimed at Ohio rather than California." *Id.* at 807. Because the dealer's "express aim was local," the district court lacked jurisdiction to hear Schwarzenegger's complaint.

Yahoo! Inc., 433 F.3d at 1224-1225 (concurring opinion) (emphasis added).

Ashby was on patrol in Idaho on Idaho roads to ensure the safety of travelers in Idaho and to enforce Idaho laws. There was nothing before the Superior Court that evidences Ashby was targeting Washington or its residents. Ashby, an Idaho State Police trooper, was investigating an Idaho driver whom he observed violating Idaho traffic laws on Idaho roads. He stopped the Idaho car on what he thought was an Idaho road. Even if the stop ultimately occurred in Washington, the requirement that Ashby's conduct must be expressly aimed at Washington or its residents is not met under these facts.

b. Pruczinski Alleges Ashby's Purposeful Contact with Washington Caused Her Injury.

The second prong of the specific personal jurisdiction test asks whether the claim arises out of or results from the defendants' forum-related activities. *Mattel, Inc.*, 354 F.3d at 864. Soley and only for purposes of Ashby's CR 12(b)(2) motion to dismiss, Pruczinski's allegation that she suffered damages caused by Ashby's conduct is to be treated in a light most favorable to her. However, this alone does not satisfy the second prong of the test. Although Pruczinski alleges she suffered some injury as a result of the contact between her and Trooper Ashby, she fails to establish that her claim arose from a purposeful act by Ashby expressly aimed at Washington or its residents.

c. Exercising Personal Jurisdiction Over Ashby Violates the Fundamental Notions of Fairness and Substantial Justice.

The third criteria of the test, whether the assumption of jurisdiction by the forum state offends traditional notions of fair play and substantial justice, analyzes a number of factors. In that regard, courts consider: (1) the quality, nature, and extent of the activity in the forum state; (2) the relative convenience of the parties; (3) the benefits and protection of the laws of the forum state afforded the respective parties; and (4) the basic equities of the

situation. *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 767, 783 P.2d 78 (1989). The federal version of the “fair play and substantial justice” factor is that the exercise of jurisdiction in the forum state must be reasonable. *Zepeda v. Pace Int'l Research, Inc.*, 670 F. Supp. 1509, 1511 (W.D. Wash. 1987).

The Ninth Circuit considers seven factors in determining reasonableness:

(1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Mattel, Inc., 354 F.3d at 862. No one factor is dispositive; rather, a court balances all seven. *Id.* These factors are significant in the present case and merit consideration by this Court.

(1) *The extent of the Ashby's purposeful interjection into the forum state's affairs.*

This factor is analogous to the *Shute* element of “quality, nature, and extent” of the activity. The “purposeful interjection” factor weighs in favor of Ashby. The due process clause protects a defendant's right to receive fair warning that his actions might subject him to suit in a given jurisdiction. This safeguard allows him to structure his conduct with a degree of assurance as

to what will flow from his conduct. *Burger King*, 105 S. Ct. at 2181-82. If anything, Ashby's contact with Washington was unintentional and did not constitute a fair warning that he was subjecting himself to Washington jurisdiction. In summary:

- Ashby was on patrol on westbound I-90 in Idaho
- In an Idaho State Police patrol car
- When Ashby observed a car with Idaho license plates weaving on I-90 in Idaho;
- He took the first exit available west of Exit 2 in Idaho;
- He stopped Pruczinski in what he believed to be Idaho.

North Idaho Road is a road which travels through both Washington and Idaho on its route south of I-90. Ashby did not direct his actions at Washington or its residents. Rather, he was patrolling a Washington/Idaho border road which is, in part, in Idaho. As must be viewed in a light most favorable to Pruczinski on a CR 12(b)(2) motion, the stop occurred on the Washington side of the border road. However, this fact alone does not evidence that Ashby expressly aimed his actions at Washington or that he had fair warning that his conduct might subject him to personal jurisdiction in Washington.

(2) *The burden on Ashby of defending in the forum.*

This factor is analogous to the “convenience of the parties” element in *Shute*. The “burden in defending” factor weighs in favor of Ashby. In *Hansen v. Denkla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958), the Court said:

... [R]estrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. **However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the “minimal contacts” with that State that are a prerequisite to its exercise of power of him.**

Id. at 251 (emphasis added).

Ashby resides in Idaho and, although this suit was filed against him individually, it is in effect a suit against an agency of the State of Idaho – the Idaho State Police. Not only will Ashby be required to defend in this forum but his employer, the Idaho State Police, will be as well. Washington law is clear that an employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. In *Melin-Schilling v. Imm*, 149 Wn. App. 588, 592, 205 P.3d 905 (2009), the Court held:

The ... test ... in place in Washington is ...:

...An employee is acting within the scope of [his employment] when [he] is performing services for which [he] has been [employed], or when [he] is doing anything which is reasonably incidental to [his employment]. The test is not necessarily whether this specific conduct was expressly authorized or forbidden by the employer[], but whether such conduct should have been fairly foreseen from the nature of the [employment] and the duties relating to it...

Id. at 592 (citations omitted).

Defending an action in Washington that consists wholly of Idaho parties and a number of witnesses is an unreasonable burden on Ashby.

(3) ***The extent of conflict with the sovereignty of Ashby's state.***

The extent of conflict between the sovereignties, Washington and Idaho, weighs in Ashby's favor. Idaho has a strong interest in providing an effective means of redress for its residents under its statutes for actions against its state employees in the performance of their duties. Although Washington has an interest in protecting its citizens, that is not at issue in Pruczinki's lawsuit. This is a lawsuit filed by Idaho residents, in Washington, against an Idaho State employee regarding his alleged improper conduct while on duty as an Idaho State Police trooper. Washington has the thinnest of connections to this action – the fact that Pruczinski alleges the stop occurred on the Washington side of an Idaho-Washington border road.

Idaho has a substantially stronger interest in adjudicating this dispute between its residents, its police trooper and, through him, an Idaho state agency. Pruczinski's claims include allegations of a police trooper acting outside the scope of his duties as an officer with the Idaho State Police. While this is a question on the merits which is not at issue in this motion, it is a factor in assessing the interest of the State of Idaho in adjudicating this dispute. Idaho has enacted legislation expressly granting the District Courts of Idaho exclusive jurisdiction of all claims against its state agencies or its employees – Idaho Code § 6-914. Normally, a court should refrain from exercising jurisdiction when another state has expressed a substantially stronger sovereignty interest and that state's courts will take jurisdiction. *Raffaele v. Compagnie Generale Maritime, S.A.*, 707 F.2d 395, 398 (9th Cir. 1983); *see also Timberlane Lbr.*, 549 F.2d at 614.

(4) ***The forum state's interest in adjudicating the dispute.***

The "forum's interest" factor weighs in favor of Ashby. The discussion of this factor is encompassed in the discussion above on the extent of conflict with the sovereignty of the State of Idaho.

(5) **The most efficient judicial resolution of the controversy.**

The “efficient resolution” factor focuses on the location of the evidence and witnesses. *Panavision*, 141 F.3d at 1323. The parties to the action reside in Idaho. Pruczinski’s claims are against an Idaho State agency employee for the performance of his duties while on patrol as an Idaho State Police trooper. Many of the potential witnesses reside or are located in Idaho. The most efficient resolution of this controversy lies with Idaho.

As noted above, the interest of Washington in adjudicating this dispute between Idaho residents is much less than that of the State of Idaho. While Washington has an interest in protecting its citizens, that factor is not present here.

(6) **The importance of the forum to Pruczinski's interest in convenient and effective relief.**

The parties and potentially many of the witnesses reside in Idaho. The forum state chosen by Pruczinski, Washington, is convenient for no one in this action. Idaho was the most convenient place for Pruczinski to bring this action. By filing this action in Washington, Pruczinski seeks to avoid the conditions precedent to suit against the State of Idaho or its employees.

While this might be considered “efficient” from Pruczinski’s point of view, it cannot be said to be reasonable.

(7) **The existence of an alternative forum.**

If a plaintiff wishes to argue the unavailability of an alternative forum as a factor increasing the reasonableness of jurisdiction in the forum, the plaintiff must carry the burden of going forward on this issue. This is in line with the plaintiff’s general burden on jurisdictional issues. *See KVOS, Inc., v. Associated Press*, 299 U.S. 269, 278, 57 S. Ct. 197, 200, 81 L.Ed. 183 (1936); *Amba Marketing Systems, Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Pruczinski is a resident of the State of Idaho and had access to the Idaho courts for her action against Ashby, a resident of Idaho and an Idaho state employee.

4. Washington Jurisdiction Over Ashby Violates His Rights to Due Process.

In assessing all the elements of due process which must be satisfied for Washington to exercise jurisdiction over Ashby, it is apparent that each factor weighs in favor of Ashby. The record demonstrates a compelling case that the exercise of specific personal jurisdiction in Washington would be unreasonable and that dismissal is warranted. *See Panavision*, 141 F.3d at 1324.

F. WASHINGTON SHOULD DECLINE JURISDICTION UNDER THE PRINCIPLES OF COMITY.

Comity allows a state to decline jurisdiction over another state. Such comity is properly exercised when the assumption of jurisdiction would not promote cooperative efforts between states. *Glover v. Alaska*, 142 Wn. App. 442, 447, 174 P.3d 1246 (2008).

Principles of comity allow states to decline jurisdiction over another state and its employees in order to promote friendly relations and a mutual desire to do justice. In *Williams v. State of Washington*, 76 Wn. App. 237, 885 P.2d 845 (1994), considerations of comity led the trial court to decline jurisdiction, relying upon *Fernandez v. Department of Hwys.*, 49 Wn. App. 28, 741 P.2d 1010 (1987).

In *Fernandez*, the court found that, although jurisdiction could be taken over Oregon in a case involving a trespasser on a bridge between Washington and Oregon, considerations of comity allowed Washington to decline jurisdiction. The Court noted that the United States Constitution allows, but does not require, such a refusal of jurisdiction. *See Nevada v. Hall*, 440 U.S. 410, 426, 59 L. Ed. 2d 416, 428, 99 S. Ct. 1182, reh'g denied, 441 U.S. 917 (1979). States are free to presume a greater degree of comity, friendship and kindness towards one another. Comity may be applicable in

situations where assumption of jurisdiction would impinge unnecessarily upon the harmonious interstate relations that are part and parcel of the spirit of co-operative federalism. *Id.*

Washington and Idaho have codified the intent of both states to cooperate in the enforcement of traffic and criminal laws by enacting laws allowing for mutual cooperation and enforcement. *See* RCW 10.93 *et seq.* (Washington Mutual Aid and Peace Officers Powers Act), and Idaho Code § 67-2328⁹ (Joint Exercise of Powers) and § 19-701¹⁰ *et seq.* (Fresh Pursuit Act). Imposing Washington jurisdiction on an Idaho state employee does not foster the cooperative endeavors between Washington and Idaho evidenced by the laws of both states and jurisdiction should be declined in this action.

VIII. CONCLUSION

The law does not permit Pruczinski to redact inconvenient facts to establish reasonableness for the imposition of Washington jurisdiction over Ashby and, in actuality, the Idaho State Patrol through him. Likewise, it is not permissible for Pruczinski to establish personal jurisdiction over Ashby solely by alleging the traffic stop occurred in Washington.

⁹ Exhibit No. 3 - Idaho Code § 67-2328.

¹⁰ Exhibit No. 4 - Idaho Code § 19-701.

Plaintiffs, both of whom are Idaho residents, purposefully disguised their complaint against an Idaho State employee to avoid the jurisdiction of the Idaho courts. Notwithstanding Plaintiffs' characterizations of the contact between Ms. Pruczinski and Trooper Ashby, this case involves a claim that an Idaho State Police trooper acted improperly while in the course and scope of his employment. Such a claim is within the exclusive jurisdiction of the Idaho courts. Simply put, the Washington courts do not have either subject matter or personal jurisdiction over Trooper Ashby. The lack of either subject matter or personal jurisdiction is sufficient to dismiss this claim. Contrary to Pruczinski's argument, the jurisdictional question cannot be limited to solely the location of the contact. Whether the actual traffic stop was in Washington, Idaho or both states, is not determinative of jurisdiction as a matter of law. Finally, the principles of comity afford this Court the opportunity to decline jurisdiction, particularly where Plaintiffs as Idaho residents had protections available to them under Idaho law.

DATED this 6 day of May, 2014.

JOHNSON LAW GROUP

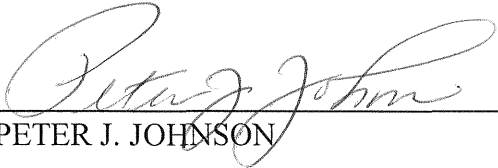
By: 

PETER J. JOHNSON, WSBA # 6195
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2014, a true and correct copy of the foregoing was placed in an envelope, sealed and deposited into the United States Mail at Spokane, Washington, with first class postage fully prepaid thereon, addressed to the following:

Douglas D. Phelps
Phelps & Associates, P.S.
2903 N. Stout Road
Spokane, WA 99206-4373


PETER J. JOHNSON

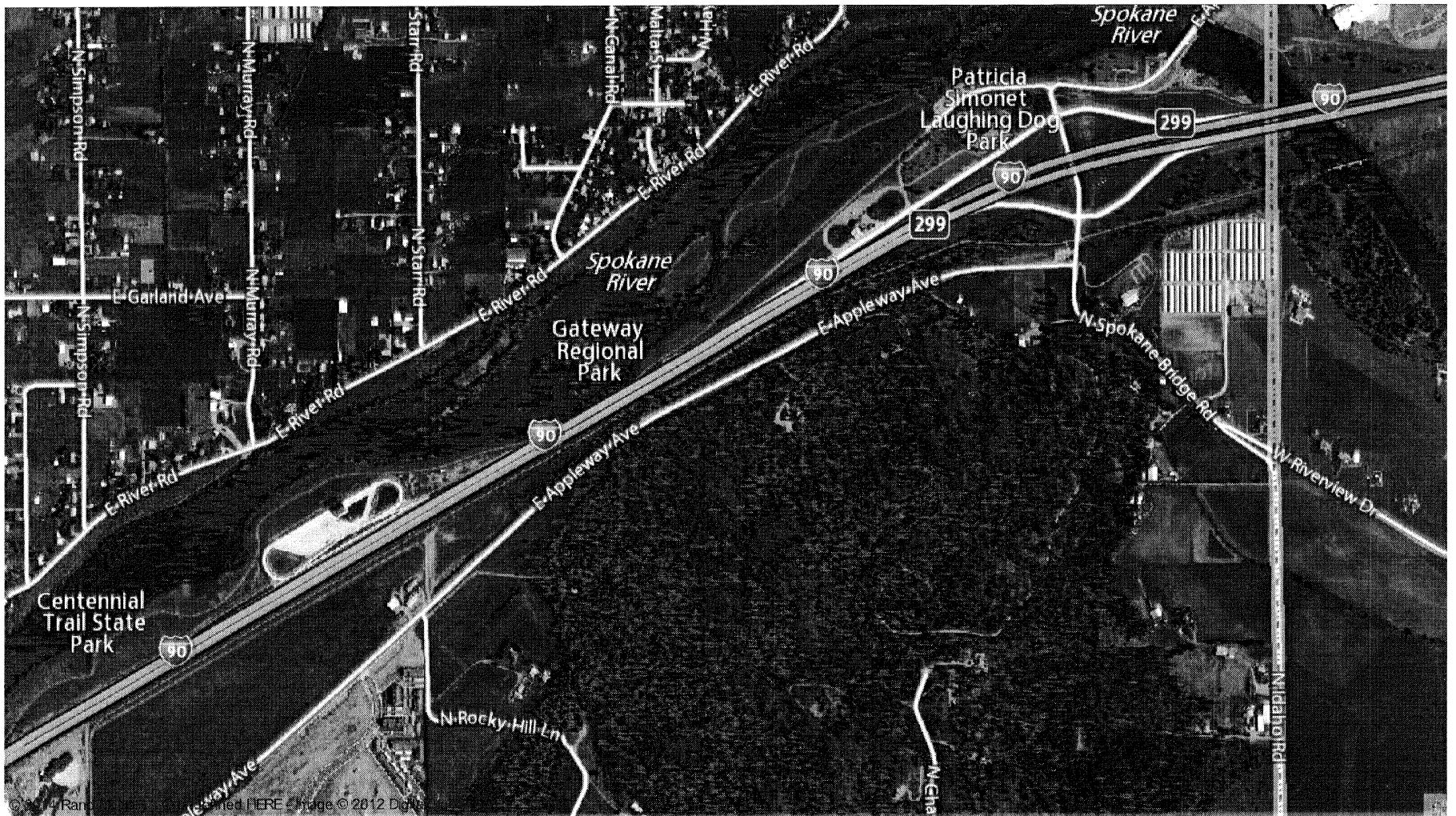
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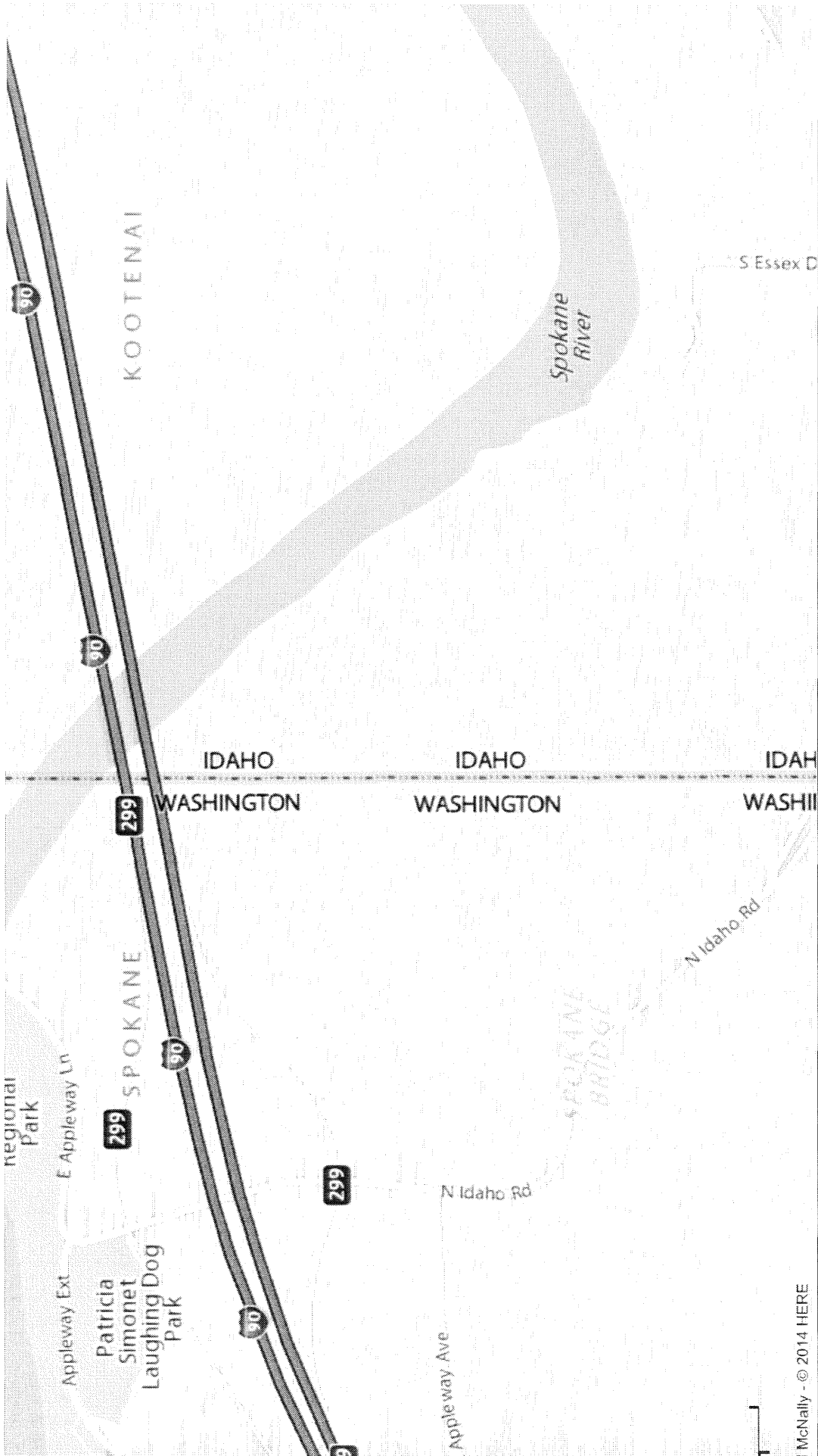
EXHIBIT 1

Maps



Map of: Spokane Bridge 99019





Spokane River

S Essex Dr

KOOTENAI

W Riverview Dr

IDAHO

IDAHO

IDAHO

WASHINGTON

WASHINGTON

WASHINGTON

N Idaho Rd

N Idaho Rd

SPOKANE BRIDGE

SPOKANE

N Idaho Rd



Map Theme Property Map

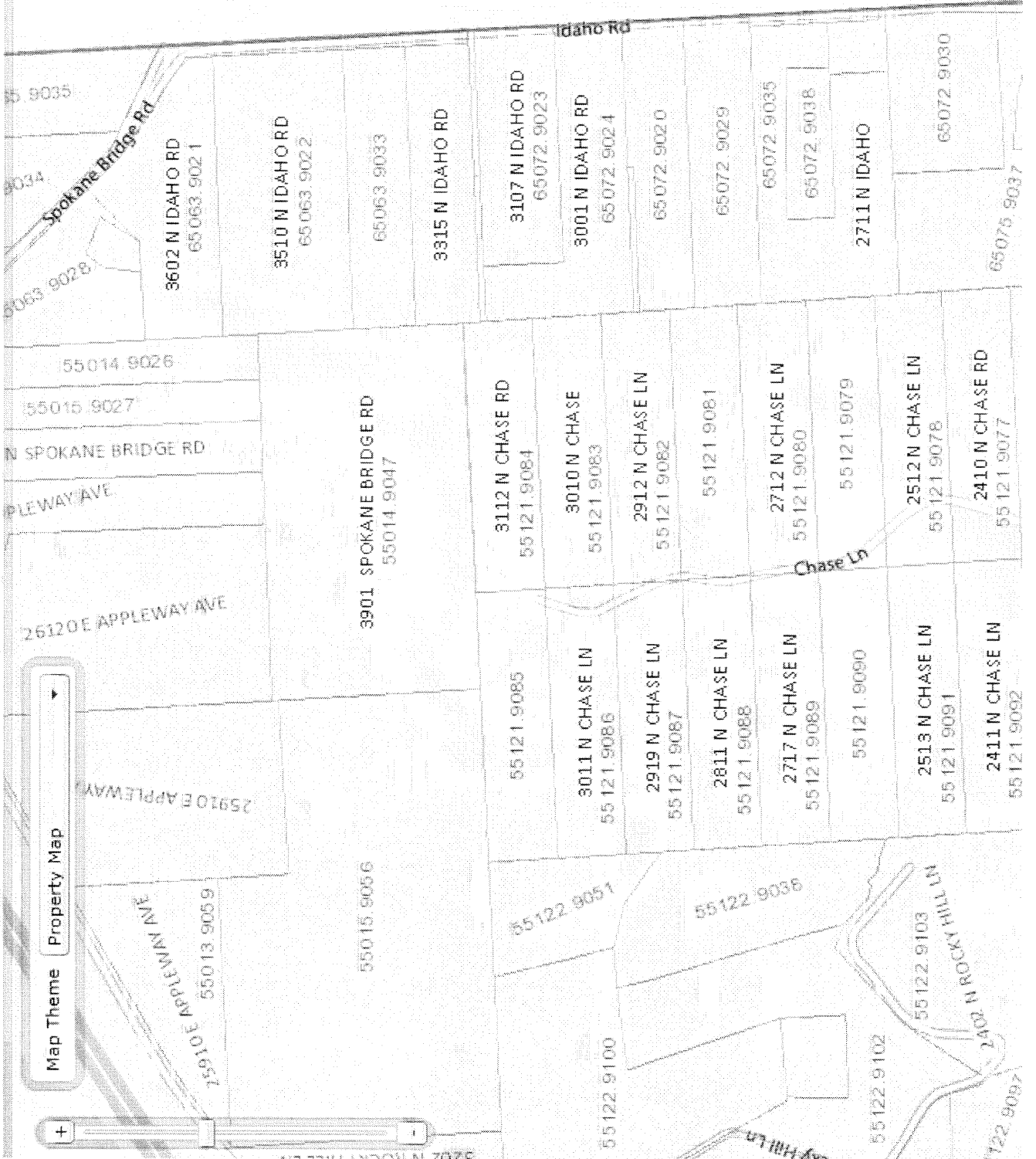


EXHIBIT 2

Idaho Code § 6-914



1 of 1 DOCUMENT

IDAHO CODE
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*** Statutes current through the 2012 Regular Session and results of November 6, 2012, General Election ***

CODE OF CIVIL PROCEDURE
TITLE 6. ACTIONS IN PARTICULAR CASES
CHAPTER 9. TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES

Go to the Idaho Code Archive Directory

Idaho Code § 6-910 (2012)

§ 6-910. Suit on denied claims permitted

If the claim is denied, a claimant may institute an action in the district court against the governmental entity or its employee in those circumstances where an action is permitted by this act.

HISTORY: 1971, ch. 150, § 10, p. 743; am. 1976, ch. 309, § 9, p. 1062.

NOTES: COMPILER'S NOTES. The words "this act" refer to S.L. 1971, ch. 150, which is compiled as §§ 6-901, 6-902, 6-904, 6-905, 6-906, 6-907 to 6-918, 6-919 to 6-925, 6-927, and 6-928. Probably, the reference should be to "this chapter," being chapter 9, title 6, Idaho Code.

CITED IN: *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986).

EXHIBIT 3

Idaho Code § 67-2328



11 of 11 DOCUMENTS

IDAHO CODE

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*** Statutes current through the 2013 Session ***

GENERAL LAWS

TITLE 67. STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 23. MISCELLANEOUS PROVISIONS

Go to the Idaho Code Archive Directory

Idaho Code § 67-2328 (2014)

§ 67-2328. Joint exercise of powers

(a) Any power, privilege or authority, authorized by the Idaho Constitution, statute or charter, held by the state of Idaho or a public agency of said state, may be exercised and enjoyed jointly with the state of Idaho or any other public agency of this state having the same powers, privilege or authority; but never beyond the limitation of such powers, privileges or authority; and the state or public agency of the state, may exercise such powers, privileges and authority jointly with the United States, any other state, or public agency of any of them, to the extent that the laws of the United States or sister state, grant similar powers, privileges or authority, to the United States and its public agencies, or to the sister state and its public agencies; and provided the laws of the United States or a sister state allow such exercise of joint power, privilege or authority. The state or any public agency thereof when acting jointly with another public agency of this state may exercise and enjoy the power, privilege and authority conferred by this act; but nothing in this act shall be construed to extend the jurisdiction, power, privilege or authority of the state or public agency thereof, beyond the power, privilege or authority said state or public agency might have if acting alone.

(b) Any state or public agency may enter into agreements with one another for joint or cooperative action which includes, but is not limited to, joint use, ownership and/or operation agreements pursuant to the provisions of this act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of these participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (1), (3), (4), (5), and (6) of subsection (c) of this section, contain the following:

(1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(3) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performances may be offered in satisfaction of the obligation or responsibility.

HISTORY: 1970, ch. 38, § 3, p. 82; am. 1981, ch. 231, § 2, p. 469; am. 1984, ch. 72, § 3, p. 133; am. 1992, ch. 114, § 2, p. 343.

NOTES: CROSS REFERENCES. Joint county hospitals authorized, § 31-3512.

LEGISLATIVE INTENT. Section 3 of S.L. 1994, ch. 86 provided: "It was and is hereby declared to be the intent of the Legislature that counties may enter into joint powers agreements pursuant to the provisions of Chapter 23, Title 67, Idaho Code, to provide emergency communications services on a regional or multicounty basis. Therefore, notwithstanding any provision of law or court ruling to the contrary, all joint powers agreements between counties to provide emergency communications services on a regional or multicounty basis existing prior to the adoption of this enactment are hereby ratified, approved and affirmed."

COMPILER'S NOTES. For words "this act" see Compiler's notes, § 67-2326.

EFFECTIVE DATES. Section 3 of S.L. 1981, ch. 231 declared an emergency. Approved April 6, 1981.

CITED IN: *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

OPINIONS OF THE ATTORNEY GENERAL.

Idaho counties have authority to join in an agreement with counties of Utah and Wyoming to develop a joint water project on the Bear River. Under Idaho law, however the purposes of the water project must be limited to the irrigation or drainage of lands in the respective counties. OAG 89-1.

The Idaho water resource board could issue revenue bonds to fund Idaho's share of a joint water project constructed by another entity without legislative approval. OAG 89-1.

The Idaho water resource board has authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, Utah, or Wyoming. However, the Idaho legislature must authorize construction of the project before the Idaho water resource board may issue the revenue bonds. OAG 89-1.

The legislature has not given Idaho counties authority to produce and sell electric power. Therefore, Idaho counties lack authority to enter into an agreement with counties of other states to develop a joint water project for the production and sale of hydroelectric power. OAG 89-1.

EXHIBIT 4

Idaho Code § 19-701



IDAHO CODE
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*** Statutes current through the 2013 Session ***

PENAL CODE
TITLE 19. CRIMINAL PROCEDURE
CHAPTER 7. FRESH PURSUIT LAW

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Idaho Code § 19-701 (2014)

§ 19-701. Officer of another state entering state in fresh pursuit of suspected felon

Any member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

HISTORY: 1941, ch. 69, § 1, p. 133.

NOTES: CROSS REFERENCES. Initial appearance before magistrate, Idaho R. Crim. P. 5.

AUTHORIZED PURSUIT.

Where Nevada patrolman observed defendant's vehicle weaving on the highway and followed him into Idaho, where Nevada patrolman stopped and detained defendant until Idaho patrolman arrived who took defendant into custody, gave him a sobriety test which he failed, and arrested him, pursuit and detention of defendant by Nevada patrolman was legal. *State v. Ruhter, 107 Idaho 282, 688 P.2d 1187 (1984).*

COLLATERAL REFERENCES.

AM. JUR.

5 Am. Jur. 2d, Arrest, § 72.

C.J.S.

6A C.J.S., Arrest, § 18.