



# Idaho's Citizen Commission for Reapportionment

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Public Meeting  
Tuesday, August 2, 2011  
Capitol Auditorium, Capitol Building  
2:00 p.m.

Present were: **Commissioner Esposito, Commissioner Finman, Commissioner Frasure, Commissioner Andersen, Commissioner Kane, and Commissioner Moses.** Present from the staff were **Mr. Keith Bybee, Ms. Kristin Ford, Mr. Todd Cutler, and Cyd Gaudet.** Present from the Attorney General's office were **Mr. Brian Kane, and Ms. Mooney.**

**Chairman Frasure** called the meeting to order, and thanked everyone for their patience. He indicated that the staff had provided the commission with three more sets of minutes for July 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>. He then asked for any comments or motions. **Commissioner Andersen** then moved to adopt the minutes for July 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>. As all were in favor, the minutes were approved.

**Chairman Frasure** then asked if there had been any additional public submitted maps, and **Mr. Cutler** indicated that there had been no new plans submitted. **Chairman Frasure** then confirmed that the final map submitted was L34, and indicated, in reference to the previous commission, that hopefully the commission was shooting for a number lower than L97. He then asked if there was any discussion on the legislative plans that had been submitted.

**Commissioner Kane** then indicated that in reference to plan L34, she would like to talk about the area she is from, which is the Latah, Nez Perce County area. She said that the public testimony was very good, and that a lot of good things came from a lot of good people. However she stated that there were some times when one person's interests conflicted with the next person's, so it is good to use testimony to back up your plan, but not without recognizing the conflict. She stated that their mandate, as a redistricting commission, is bigger than one individual's testimony, and at the same time their mandate is more restrictive than the public's, as they have the constitutions, as well as the statutory guidelines. She said that this creates what someone yesterday had described as dilemmas.

**Commissioner Kane** stated that Nez Perce and Latah Counties do not need to be split. In an effort to keep the Nez Perce Reservation whole, she stated that the result was a negative impact on tribe, as the tribe's less than 2,000 voters are completely subjugated to the rural voters in Idaho, Clearwater and Lewis Counties. She indicated that the testimony of the tribe was, "we did not expect that the entire reservation be contained in one district", however the tribe did request that the commission consider changing the lines, "so that the reservation's representation not be diluted". She said that the tribe's testimony also included that the tribe has close ties to Lewiston, as the casino and the store have Lewiston addresses. As such she said that the economic ties are very close to Lewiston, yet they are separating them in this plan. She said it was also interesting that those testifying in Lewiston and Moscow that they should be together, because they had a lot in common, did not reside in Lewiston or Moscow. She indicated that she has an intern that is a student at the University of Idaho, who never went to Lewiston except to pass by there on her way home. **Commissioner Kane** noted that in the Bingham County case, the court laid out factors that make up what they called communities of interest. Those factors include urban and rural, whether residents regard themselves as communities, whether they have common transportation lines, common media, and common judicial and school districts. She indicated that Moscow and Lewiston do not have anything in common. She also stated that the U of I and LCSC do not have anything in common. She said that LCSC caters to nontraditional, part time students, specializing in nursing and teaching,

and the U of I has a broader curriculum to offer to students in Idaho because it's a state university. She indicated that in fact the U of I has much more in common with WSU which is just eight miles away. She indicated that WSU and U of I share classes, and have a shuttle that transports students back and forth. She said that she occasionally visits Indian Law classes at the U of I Law School, and she has found that very few of the students are familiar with the Lewiston, Lapwai area, even though it is fairly close, being less than an hour away. She also noted that the geography in these areas is very different. She indicated that in this area in particular she believes that neither Latah nor Nez Perce needs to be split. She did not believe that this would be defensible in court, when they have a plan that doesn't split them, waiting in wings, with less than a 10% deviation.

**Commissioner Moses** then indicated that he wanted to compliment **Commissioner Esposito** for bringing forth a plan that does have some qualities that bear praise. He said that the deviation is excellent given the building blocks that they have to work with in Idaho, which is difficult, and he needs to be applauded. However in having waited almost two weeks for a map he confessed to some disappointment in the way that it lays out the state, and in particular the way it treats their constitutional obligations, along with the statutory ones. He noted that there are a number of county splits that they cannot see the reason for. He indicated that **Commissioner Kane** had touched on two of those; however Kootenai County, as well, can form districts without going outside of the county. He said that under their obligation noted in Article 3, Section 5 of the Constitution, if they can do that, they should do that. He noted that Ada County has population taken away from it when it does make 9 districts all within the acceptable deviation. He said that what it looks like is that Ada is being used for spare parts for other parts of the map.

He also indicated that he wanted to touch briefly on the question of the public testimony, which was used to justify the splitting of Latah and Nez Perce, coming from people not being from that area. He said that they heard from people all over the state, who had solutions to their problems, which involved other people paying the price. He noted that there was one witness who laid out what she wanted, and when asked how she would recommend the commission do that, she said that's your problem. He indicated that people do ask for things with an imperfect knowledge of the restrictions which the commission operates under. He noted that there was one individual in Moscow who suggested that his interests were so strong that they might consider removing one man one vote, in order to pursue that. He said that they all know that's not something that they are able to do, in their judgment, and so they do have to exercise their judgment when they look at these comments.

He then indicated as they get to the eastern part of the state, the split of Bonneville or Freemont Counties is difficult for them to see why those are necessary, when it is avoidable. He said that he didn't know how he could drive through Bingham County again and feel secure if they approved a map that cuts it up the way that this map does. He said that, leave alone court, he would have trouble defending this to the public in Bingham County as to why it was necessary. He noted that this will take a lot of effort; however he does think that they need to go back to drawing board, and keep in their minds the order of priority that they are to serve. He stated that the first priority is equal representation for all voters, which they call one man one vote, and is the bedrock of popular democracy. He said beyond that the Idaho Constitution is clear that they are to honor county lines whenever it's possible, so that should be uppermost. After that he noted comes their various statutory requirements. He stated that there are a number of statutory requirements, and he was not going to enumerate them again, as they all know what they are, and they have to be loyal to those as well. He said, in short, that he would hope that as a commission they could do better than what they have before them now.

**Commissioner Esposito** then indicated that he had a number of comments. First he said that he believed that **Commissioner Moses** was correct that there was a certain amount of conflicting testimony; however the overwhelming preponderance of testimony that was followed in this map clearly set the stage for building the map the way he built it. He said also that he did recall one person saying *it's your problem*, however he believed that person was in Eastern Idaho, in Bannock County, and was a sitting State Senator. He indicated that they had a number of people make that comment to them, so he took it upon himself, to resolve some of these problems. He said that the other thing that they need to be careful about is that it is not their job to be lawyering when it comes to how they construct these maps. He said that the law is very clear, they have a constitutional mandate, and it gives them the option to split counties as necessary. He said that it also gives the legislature the authority to pass corresponding statutes that would aid and guide the commission in terms of constructing these maps. He indicated that two of the key ones are the connecting roads and the non splitting of precincts. He said that they recognized the fact that they would need a process, because they wanted to keep that to a minimum, but they did give them a process where they could vote to make those decisions.

He indicated that he constructed his map in response to L28 in seeing where the position of his fellow commissioners was that county divisions trumps everything, and he does not buy it. He said that he thinks that they have all of the rules and regulations and court rulings that they need to follow. He also said that he thinks it is dangerous to ignore some, or to follow one, at the expense of the others. He said as to the deviation that one person one vote is the goal, and that their mandate is to put a plan together that serves the best interests of all the citizens of the state. He said that he would argue adamantly that a low deviation plan that gives greater weight to one person one vote far exceeds any splitting of county situation. He noted that he thinks that they are at the point where they agree to disagree, and the one thing that he agrees with is that now it is time to roll up their sleeves and see how they can come together, and put a plan together, that does serve all of the citizens of the state, and meets the goals and objectives of this committee. **Commissioner Esposito** stated that he is ready to do that, he is ready to take this plan and make the changes that **Commissioner Kane** has so eloquently pointed out. He

also noted that the commission has received an email from Representative Rusche pointing out some of the same issues and concerns, and about a group that has been formed up in that part of the state that makes representation of the tribe problematical. He said that he is willing to take a look at what can be put on the table to resolve some of these issues. However he said that he can't let some of the statements go unchallenged in terms of how and why this map was constructed. He stated that he has one last thing for Bingham County, that it may be the one county that comes the closest to remaining whole, but in the overall context of what's best for all of the citizens of the state, it's not just what's best for Bingham County. So if they end up getting divided, they end up getting divided, and he can't be more direct and adamant about that.

**Commissioner Kane** then noted that she is also ready to roll up her sleeves and get to work on trying to get some compromise going. She said that now that **Commissioner Esposito** has mentioned the statutory guidelines, and whether you call it lawyering or not, she thinks at the beginning what they all were trying to do is to see what they could do about avoiding a lawsuit. She indicated that she doesn't think you have to be a lawyer to look at the guidelines and see which ones supersede the other ones. She agreed that you don't look at them in a vacuum, that you look at them all together. She indicated that in reference to the road rule, that their technical people put together a map, which shows that there are five areas on L34, where the road rule is violated. She then had a map handed out and stated that there are no roads between Nez Perce and Idaho Counties, no road between Gem and Valley Counties, no road between Elmore and Twin Falls, no road between Camas and Lincoln, and no road between Lemhi and Butte. She explained that the red marks on the map show clearly where there are no roads in the counties.

**Commissioner Esposito** then stated that as long as there is one county, which connects to another county, within the district, that passes as a statutory requirement. He said that to say that Valley County does not connect with Gem County that anyone who's driven Highway 55 could clearly see there is a direct connection going east to west through Boise County into Gem County, which clearly connects those counties. He said that Camas and Lincoln County connect thru Blaine County, and Twin Falls County connects to Elmore County through Gooding. He also stated that Lemhi connects to the rest of the Counties through Highway 93 and Highway 20. He then stated that he guessed he could say nice try on part of their staff, but it does not meet by any means, a violation of the statutory requirement of connecting roads, and if that's lawyering on his part so be it.

**Commissioner Moses** then suggested that they may be getting to the point where other uses of their time may be more productive. He said that their staff was at work upstairs assembling some work that they had put together, and suggested that if it was the committee's pleasure, they would like to take a little time to see if they could get that work completed, as well as laying the ground work for progress in future endeavors.

In response to **Chairman Frasure's** question about a request for a recess or adjournment, **Commissioner Andersen** requested a recess until 3:00 p.m.

**Chairman Frasure** then noted that he appreciated Commissioner **Esposito** explanation. He said that he wanted to clarify that there is a state road that connects Lemhi into Butte County, and the other ones as stated by **Commissioner Esposito** do stand. He said that they appreciate the comments; however he wanted to remind the commission that according to statutory and constitutional law, they are not a court of competent jurisdiction. He noted that even if they were, they are divided on this issue 3 to 3. He stated that 3 to 3 does not overturn the constitution, so the simple fact is that they are not united on this. He indicated that if in fact they are that court of competent jurisdiction, unless you are saying that just the three Democratic commissioners are a court of competent jurisdiction, and that the three Republican commissioners are all wet, then it would be an interesting concept. He wanted to remind the commission that they were sworn to uphold the constitution, and that all of these laws are assumed constitutional until a court of competent jurisdiction rules otherwise. He said that they could continue this lawyering and that this could be a focal point of their debate, but he wanted to make this clear.

**Commissioner Andersen** then suggested, along that same line, that if they were able to complete a map and have a 6-0 vote on it, that they wouldn't have to worry about it anyway.

**Chairman Frasure** said that this was a great observation and that hopefully they would get there. He then called a recess until 3:15 p.m.

**Chairman Frasure** brought the commission out of recess at 3:20p.m. He indicated that he had a request, that there was some work underway, and that they were going to recess again until 4:00 p.m.

**Chairman Frasure** then called the commission back from recess at 4:05p.m. and called on **Commissioner Moses**.

**Commissioner Moses** then indicated that they had a proposal to put before the commission. He said that because it was essentially a modification of their existing L28 that what they were passing out was an insert to the binders which they already had. He then said that he would go through what is being changed. **Chairman Frasure** then noted that this should be assigned a new number, and confirmed that this would be L35.

**Commissioner Moses** noted that the largest part of the change is a redraw of Ada County. He said that Ada County is still 9 districts without going outside of the county.

In response to a request from **Chairman Frasure**, **Commissioner Moses** then started with District 14. He noted that District 14, as it was drawn now, is northwest Ada County, and it includes Star and some suburbs of Eagle. He apologized for the notches at the south part of the district, but noted that those were courtesy of the Ada County Clerk.

District 15 is essentially west Boise and west Ada County. He noted that the figures for these were are on the charts; however it does not change any of their variances over all.

District 16 includes Garden City and Boise's west bench area.

District 17 is the central bench area of Boise, it includes BSU, and it runs all of the way south to the airport and surrounding neighborhoods.

District 18 is southeast Boise and includes the Lakewood, River Run, and Surprise Valley neighborhoods and Harris Ranch, which had recently been connected to south east Boise by the Park Center Bridge. It also moves up to include Boise's East End and Highlands neighborhoods.

District 19 is Boise's North End, Highlands and Hidden Springs, and most of the City of Eagle.

District 20 is the City of Meridian as had been requested by Meridian officials that Meridian be maintained in one district as much as possible. He indicated that if you were drawing Meridian in a vacuum it probably could have two districts, however as they were not drawing it in a vacuum they were able to put it in the one for them.

**Chairman Frasure** then asked what the population of Meridian is, and **Commissioner Moses** indicated that it was in the range of 80,000. **Chairman Frasure** indicated that this could almost be two complete districts.

District 21 contains southwest Ada County including Kuna, and it runs along the western edge of the county.

District 22 is that large area of southeast Ada County.

**Commissioner Moses** then indicated that the rest of the change moves over to the Bannock, Bingham area. He said that what they had done there is kind of sophisticated; however he knew that the commissioners would follow it because all of the principles had been brought out before. He then said that they had redrawn the district to include that part of the Fort Hall Reservation in Bingham County, understanding that this does divide Bingham County, however the remainder of Bingham County is sufficient to create a district all on its own, without going outside of the county. He said that he would explain to anyone who asked what they had done here is to honor a community of interest, the Fort Hall Reservation, without doing substantial damage to the idea of a single district in Bingham County. He said that this has involved a little bit of enlargement of the City of Pocatello, however it was still home to Idaho State.

District 30 is Bingham County minus that portion of the Fort Hall Reservation which has been moved to the other district.

He then stated that these are the changes that they would propose today.

**Chairman Frasure** asked if there was any change up in the north, and **Commissioner Moses** said that they chose to contain the changes to this area at this time.

As there was no further discussion on L35, and there were no other plans to be presented, **Chairman Frasure** suggested that perhaps the following day they would make more progress. He then asked for any discussion on Congressional plans.

**Commissioner Andersen** then referenced a letter which was provided by **Mr. Kane**, and he asked him to take a moment to summarize the letter, or point out some of the things that the commission needs to be aware of.

**Chairman Frasure** suggested they delay that until they had a chance to look it over, and see if there were any questions that they would like to ask **Mr. Kane**, and suggested that they take that up the next day.

**Mr. Kane** then indicated that he would be out of town the rest of the week.

**Commissioner Andersen** then moved to adjourn. As all agreed, **Chairman Frasure** indicated that they would stand adjourned until 10:00 a.m. the following morning.