



## STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

March 7, 2022

The Honorable Judy Boyle  
Idaho House of Representatives  
[jboyle@house.idaho.gov](mailto:jboyle@house.idaho.gov)

*Sent via electronic mail*

Dear Representative Boyle:

This letter is provided to assist you regarding your question surrounding the interpretation of Idaho's western border as written in the Idaho Constitution, and whether it should be interpreted as the original location of the borders as fixed upon statehood, or the current border, which could change for a number of reasons.

### ISSUES PRESENTED

1. Should Idaho's legal description in Article XVII, § 1 of the Constitution be interpreted as the original location of the boundary (which is fixed) or the current location of the boundary (which could change); and
2. Would a geographical boundary change require an amendment to the Constitution?

### SHORT ANSWER

Idaho's borders as described in the Constitution should be interpreted as the original location of the boundary, which was fixed by Congress under the Admission Act and defined in the Idaho Admission Bill. When the location of a state's border is called into question or deemed as ambiguous, courts look to the border's location *at the time* the state was admitted into the Union. If a state's borders were fixed under an Act of Admission, no act of congress or actions between the states without congressional consent may alter the boundaries.

Idaho's western border is described in two important documents that must be read together: Section 2 of the Idaho Admission Bill, and Article XVII of the Idaho Constitution. Although as written in the Constitution, Idaho's western border along Oregon is described as simply "the eastern boundary of the state of Oregon," when read in context with the Admission Bill and

caselaw, it should be interpreted to mean the location of the boundary as it was at the time Idaho was admitted to statehood.

Given the differences, a hypothetical adjustment of the western border would likely require an amendment to both the Constitution and Admission Bill, however, absent a clear delineation of the proposed hypothetical border, the probability of a constitutional amendment is difficult to analyze.

## ANALYSIS

### **I. The United States Constitution grants Congress with authority to admit states and establish boundaries.**

The United States Constitution specifies the manner of admission of states into the Union, granting Congress the power to establish state boundaries.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

U.S. Const. art. IV, § 3, cl. 1. Once the boundary line of a state is established, neither Congress, nor the Supreme Court have the power to change the line without the states' consent. *New Jersey v. New York*, 118 S. Ct. 1726, 523 U.S. 767 (1998).

As part of the general right of sovereignty, the states may establish and fix disputed boundaries between them, but only with consent of Congress. *Poole v. Fleegeer's Lessee*, 36 U.S. 185, 11 Pet. 185, 9 L. Ed. 680 (1837). Boundary questions between states are political in nature and may be settled by compact. If two states negotiate and agree to adjust a boundary between them, any compact between those states would be null and void without the assent of Congress. *State of Florida v. State of Georgia*, 58 U.S. 478, 17 How. 478 (1854). Once the boundaries are set and approved by Congress, they are interpreted as federal law, and may not be unilaterally nullified by one state to the detriment of another. *State ex rel. Dyer v. Sims*, 341 U.S. 22, 28, 71 S. Ct. 557, 560, 95 L. Ed. 713 (1951).

State boundaries are determined by Congress at the time of admission, and the boundaries are interpreted as federal law. One state cannot unilaterally alter the boundaries of another without its consent. However, if two states negotiate and agree upon a boundary change between them, the agreement still requires approval from Congress due to the substantial rights that could be affected by any such change.

### **II. If a state's boundary is ambiguous, courts look to the boundaries as they existed at the time of admission to the Union.**

A land boundary between two states marks the place where the full sovereignty of one state ends, and another begins. *United States v. States of La., Tex., Miss., Ala., and Fla.*, 363 U.S. 1, 33

(1960). The power to admit new states and establish state boundaries resides in Congress. *Id.* at 35. If any boundary defined in a state's constitution is uncertain, courts will look to the historical events and documents surrounding the state's admission. *Id.* at 51, 96. "For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary." *State of Rhode Island v. State of Mass.*, 45 U.S. 591, 639, 11 L. Ed. 1116 (1846).

When boundaries between states have been disputed or called into question by ambiguities or subsequent acts, the Supreme Court looks to the state's preadmission history to construe an act of admission and measures the boundary at the time of admission. *State of N.M. v. State of Tex.*, 275 U.S. 279, 302, 48 S. Ct. 126 (1927) (since the constitution defined its boundary by the channel of the river as existing in 1850, and Congress admitted it as a State with that boundary, New Mexico, manifestly, could not subsequently question this limitation of its boundary . . .); *States of La. et al.*, 363 U.S. at 67, 80 S. Ct. at 999 (under Submerged Lands Act, boundaries of Louisiana, Texas, Mississippi, Alabama and Florida were to be measured at time of admission); *United States v. State of Tex.*, 162 U.S. 1, 91, 16 S. Ct. 725 (1896) (disputed territory properly included since belonging to Texas at the time of the admission); *Indiana v. Commonwealth of Kentucky*, 136 U.S. 479, 518–19, 10 S. Ct. 1051, 1057 (1890) (since the Ohio River was the boundary when Kentucky became a state, the boundary between Kentucky and Indiana must run on that line).

As discussed in more detail below, Idaho's borders were determined at the time of admission via the Idaho Admission Bill and the Idaho Constitution, and the long acquiescence of those borders by Idaho and Oregon and their citizens only strengthens the argument against any contrary claim. Even if Congress were to change Idaho's boundaries in accordance with the law or an interstate compact, and Idaho does not update its constitution, the boundary as defined by Congress controls.

### **III. Idaho's boundaries as defined in the Constitution and Admission Bill.**

The Snake River lies between Idaho and Oregon, comprising much of the border between the two states. The legal description of Idaho's boundaries can be found in both the Idaho Admission Bill and the Idaho Constitution; however, the descriptions are worded differently in each document. In the Admission Bill, the beginning point of Idaho's legal boundary is the Northeast corner of the State, where it intersects with Canada at the archaic 39th Washington Meridian, and completed as follows:

Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British Possessions; then following said meridian south until it reaches the summit of the Bitter Root Mountains; thence southeastward along the crest of the Bitter Root range and the Continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection

with a meridian drawn through the mouth of the Owyhee River; north on this meridian to the mouth of the Owyhee River; thence down the mid-channel of the Snake River to the mouth of the Clearwater River; and thence north on the meridian which passes through the mouth of the Clearwater to the boundary line between the United States and the British Possessions, and east on said boundary line to the place of beginning.

Idaho Admission Bill § 2.

In contrast, the beginning point of Idaho's legal boundary in the Constitution is identified as the intersection of the Snake River and Oregon's northern border:

Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root mountains; thence southward along the crest of the Bitter Root mountains till its intersection with the Rocky mountains; thence southward along the crest of the Rocky mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the state of Oregon; thence north along that boundary to the place of beginning.

Idaho Const. art. XVII, § 1.

The two descriptions define the same borders, albeit with different words. Of particular note is the apparent contrast in the two descriptions of Idaho's shared western border with Oregon. In the Admission Bill, the line between Idaho and Oregon is marked by definite points—starting at the 42nd parallel along the north/south meridian “drawn through the mouth of the Owyhee River . . . thence down the mid-channel of the Snake River to the mouth of the Clearwater River . . .” Admission Bill § 2. In contrast, the Constitution describes Idaho's western border as simply “the eastern boundary of the state of Oregon” to the point of beginning. Idaho Const. art. XVII, § 1.

Despite the seemingly different descriptions, the border between Idaho and Oregon has been positively identified as lying, in part, along the middle of the Snake River by both the United States Supreme Court and the Ninth Circuit. “Bearing in mind, then, that Snake river is a navigable stream, it is apparent, first, that on the admission of Idaho to statehood the ownership of the bed of the river on the Idaho side of the thread of the stream—the thread being the true boundary of the state—passed from the United States to the state . . .” *Scott v. Lattig*, 227 U.S. 229, 243, 33 S. Ct. 242, 244, 57 L. Ed. 490 (1913). “The State of Idaho's boundary is located in the middle channel of the Snake River.” *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250, 1251 (9th Cir. 1983).

#### **IV. Oregon's boundaries as defined in the Constitution and Admission Bill.**

Oregon was admitted into the Union in 1859. By the time Idaho became a state more than 30 years later, Oregon's boundaries were well-established. Section 1 of Oregon's Admission Bill defines its border as follows:

Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia River; thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof, to a point near Fort Walla-Walla, where the forty-sixth parallel of north latitude crosses said river; thence east, on said parallel, to the middle of the main channel of the Shoshones or Snake River; thence up the middle of the main channel of said river, to the mouth of the Owyhee River; thence due south, to the parallel of latitude forty-two degrees north; thence west, along said parallel, to the place of beginning . . .

Oregon Admission Bill § 1.

Unlike Idaho, Oregon's Constitution does not contain a descriptive boundary, but instead references the Admission Act:

The State of Oregon shall be bounded as provided by section 1 of the Act of Congress of February 1859, admitting the State of Oregon into the Union of the United States, until:

(1) Such boundaries are modified by appropriate interstate compact or compacts heretofore or hereafter approved by the Congress of the United States; or

(2) The Legislative Assembly by law extends the boundaries or jurisdiction of this state an additional distance seaward under authority of a law heretofore or hereafter enacted by the Congress of the United States.

Or. Const. art. XVI, § 1.

The description of the shared border between Idaho and Oregon in their respective Admission Bills contain the same geographical references. The border runs from the intersection of the 46th parallel, south up the middle of the Snake River to its intersection with the Owyhee River, then straight south until it reaches the 42nd parallel. This was the location of the border at the time of admission, and absent any accretion or avulsion, remains in place today. Of course, any agreed-upon adjustment to the border between the states would require congressional approval, and more than likely amendments to both states' Admission Bills.

The Honorable Judy Boyle

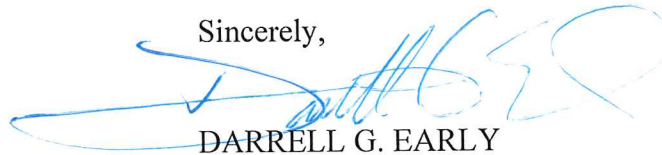
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**V. Conclusion**

Although at first glance it appears that geographical description of Idaho's border in the Constitution could be subject to different interpretations, when read in context with the Admission Act and subsequent case law, it is clear the Idaho/Oregon border is fixed as it was at the time it became a state. The border is marked, in part, by the "thread of the stream" of the Snake River and lies between the 42nd and 46th parallel. Any adjustment to the border would likely require an amendment to not only the Idaho Constitution, but the Admission Bill as well.

Sincerely,



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