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Attorneys for Appellants

IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY, a duly formed and existing)	Supreme Court Docket
county pursuant to the laws and Constitution of the)	No. 49267-2021
State of Idaho,)	
)	
Petitioner,)	PETITION CHALLENGING
)	THE CONSTITUTIONALITY
vs.)	OF REAPPORTIONMENT
)	PLAN L03 AND REQUEST
IDAHO COMMISSION FOR)	FOR WRIT OF PROHIBITION
REAPPORTIONMENT, and LAWERENCE)	AND REMAND
DENNEY, Secretary of State of the State of)	
Idaho, in his official capacity,)	
)	
Respondents.)	
_____)	

COMES NOW, Petitioner Ada County, for a cause of action against the Respondents
 states and alleges as follows:

JURISDICTION

1. The Idaho Supreme Court has original jurisdiction over this matter pursuant to Article III,
 § 2(5) of the Idaho Constitution. Idaho Appellate Rule 5(b) allows any county in this state to

challenge the plan adopted by the Commission on Reapportionment within 35 days of the Commission's filing with the Secretary of State.

PARTIES

2. Petitioner, Ada County, is a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho.

3. Respondent, Idaho Commission on Reapportionment ("Commission"), is a state commission charged with the reapportionment of state and federal legislative districts pursuant to Article III, § 2 of the Idaho Constitution and Chapter 15, Title 72 of the Idaho Code.

4. Respondent, Lawrence Denney, is the Secretary of State for the State of Idaho and it is his responsibility to receive a filing of the final report of the Commission and is required to transmit a copy of the final report to the president of the senate and the speaker of the house.

BACKGROUND

5. The United States Census Bureau released its Census 2020 results on August 12, 2021. According to the release, Idaho's total state population is 1,839,106.

6. Pursuant to Idaho Code § 72-1501, said transmittal caused the Idaho Secretary of State to issue an order for organization of the Commission on August 12, 2021.

7. The Commission called itself to order on September 1, 2021 and the Commission finished its business on November 10, 2021 when it submitted its Final Report to the Idaho Secretary of State.

8. Thirty-five (35) legislative districts are the maximum districts allowed, and the state population of 1,839,106 must be allocated among the thirty-five (35) districts.

9. An exact allocation would result in 52,546 people in each district; however, a precise number is not required and not more than a 10% deviation is allowed.

10. Attached to the Final Report is a map of L03 which was adopted by the Commission.

11. The Final Report of the Commission and L03 purports to divide eight (8) counties. There were other plans presented to the Commission that met the equal protection standard and only divided seven counties. *See* Plans 75, 76 and 79 filed with the Commission, and attached to this Petition.

12. In addition, although L03 states that it divides eight (8) counties, the number is limited to counting only one (1) county split. This limited counting is used regardless of the actual number of times a county is split and parsed out to other counties to form a district. The Commission also does not distinguish between internal and external splits in its counting.

13. Ada County was counted as one split, but three (3) different portions of the County were parsed out to three other counties: Gem, Canyon and Owyhee. In reality, Ada County was split three times. The Commission claimed that “Ada County *should* be externally split.” Report at 20 (emphasis added).

14. Bannock County was split and was parsed out to other counties. The Commission claims that “Bannock County *must* be externally split.” Report at 21 (emphasis added). According to Map L03, a portion of Bannock County is aligned with Power and Franklin Counties and another portion is aligned with Caribou and Bear Lake Counties.

15. Bonneville County was split, and a portion was parsed out to a portion of Teton County and Caribou County. The Report claims that “Bonneville County *must* be externally split.” Report at 21 (emphasis added).

16. Canyon County was split, and a portion was parsed out to northern Ada County, a portion was parsed out to Washington and Payette Counties, while yet another portion was parsed out to southern Ada County and Owyhee County. The Report claims that “Canyon County *must* be externally split.” Report at 21 (emphasis added).

17. Kootenai County was split, and a portion was parsed out to Bonner, Benewah, Shoshone and Clearwater to form a district. The Report claims that “Kootenai County *should* be externally split.” Report at 22 (emphasis added).

18. Nez Perce County was divided with a portion connected to Idaho and Adams Counties and the other portion joined with Lewis and Latah Counties. Report at 23-25.

19. Twin Falls County was split, and the vast majority was parsed out to Gooding and Camas Counties, while a small portion was parsed out to Jerome, Lincoln and Blaine Counties. The Report claims that “Twin Falls County *must* be externally split.” Report at 22 (emphasis added)

FIRST CAUSE OF ACTION VIOLATION OF IDAHO CONSTITUTION ARTICLE III § 5

Each and every fact and allegation set forth in paragraphs 1 through 19 above are incorporated within the First Cause of Action as if set forth in full.

Article III § of the Idaho Constitution states:

A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and *a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States. A county may be divided into more than one legislative district when districts are wholly contained within a single county.* No floterial district shall be created. Multi-member districts may be created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

Emphasis added. In violation of this constitutional provision, the Commission unnecessarily divided eight counties in its Final Report and Map L03. There are other maps that meet the criteria of equal voter protection and divide only seven counties. *See Plans 75, 76, and 79* filed with the Commission; *Twin Falls County v. Idaho Com’n on Redistricting*, 152 Idaho 346, 350, 271 P.3d 1202, 1206 (2012)

(“If, for example, only seven counties needed to be divided in order to comply, then a plan that divides eight counties would violate these constitutional and statutory provisions”).

Further, the Commission violated Article III § 5 because it unnecessarily divides counties and parses out portions to other counties to create legislative districts. The Commission states in its Final Report that Ada County “should be externally split” while in other splits the Commission was clear that the counties “must” be split. This Court found in the *Bingham County* case:

Obviously to the extent that a county contains more people than allowed in a legislative district, the county must be split. *However, this does not mean that a county may be divided and aligned with other counties to achieve ideal district size if that ideal district size may be achieved by internal division of the county.* Whether desirable or not, that is the meaning of Article III, § 5. *A county may not be divided and parsed out to areas outside the county to achieve ideal district size, if that goal is attainable without extending the district outside the county.*

Bingham County v. Idaho Com’n for Reapportionment, 137 Idaho 870, 874, 55 P.3d 863, 867 (2002) (emphasis added). The Commission did just what this Court in the *Bingham County* case declared that the Commission cannot do. The Commission acknowledges that the splitting of Ada County is not mandatory, but it takes a portion of northern Ada County and joins it with Gem County for a district anyway. The Commission then takes a slice of Ada County to the west and joins it with Canyon County for another district. Finally, it takes southern Ada County and joins it with Owyhee County and Canyon County for another district. This parsing out of Ada County to achieve an ideal district size is constitutionally prohibited.

SECOND CAUSE OF ACTION VIOLATION OF IDAHO CODE § 72-1506

Each and every fact and allegation set forth in paragraphs 1 through 19 above are incorporated within the Second Cause of Action as if set forth in full.

Idaho Code § 72-1506 provides in part:

Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

...
(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

...
(5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

(9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county in the district shall be directly connected by roads and highways. . .

By dividing Ada County into multiple sections, the provisions of subsections (2), (5) and (9) have been ignored. Traditional neighborhoods and local communities of interest within Ada County were divided. Report at 20. Additionally, there is no finding by the Commission that Ada County “must” be divided. The division of Ada County into three sections is in violation of the statute.

CLAIM FOR RELIEF

Petitioner prays that the Court grant the following relief:

1. Declare that the Final Report and Map L03 is unconstitutional because it unnecessarily divides too many counties, including three external splits of Ada County.
2. Issue a Writ of Prohibition that restrains the Secretary of State from transmitting a copy of the Final Report and Map L03 Report to the president of the Idaho Senate and the speaker of the Idaho House.
3. Remand this matter back to the Commission for review and revision so that the Final Report and adopted map comply with the United States Constitution, the Idaho State Constitution, and the statutory requirements.

DATED this 17th day of November, 2021.

JAN M. BENNETTS

Ada County Prosecuting Attorney

By: _____




Lorna K. Jorgensen
Deputy Prosecuting Attorney

VERIFICATION

Rod Beck, Ryan Davidson and Kendra Kenyon, Ada County Commissioners declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of his or her knowledge and belief.

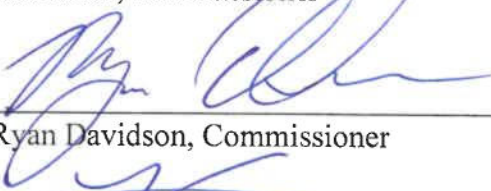
Board of Ada County Commissioners

By: _____




Rod Beck, Commissioner

By: _____



Ryan Davidson, Commissioner

By: _____



Kendra Kenyon, Commissioner

ATTEST:



Phil McGrane, Ada County Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2021, I served a true and correct copy of the foregoing PETITION CHALLENGING THE CONSTITUTIONALITY OF REAPPORTIONMENT PLAN L03 AND REQUEST FOR WRIT OF PROHIBITION AND REMAND to the following persons by the following method:

Idaho Commission for Reapportionment
PO Box 83720
Boise, Idaho 83720

<u> </u>	Hand Delivery
<u> x </u>	U.S. Mail
<u> </u>	Certified Mail
<u> </u>	Facsimile
<u> x </u>	Email: redistricting@redistricting.idaho.gov

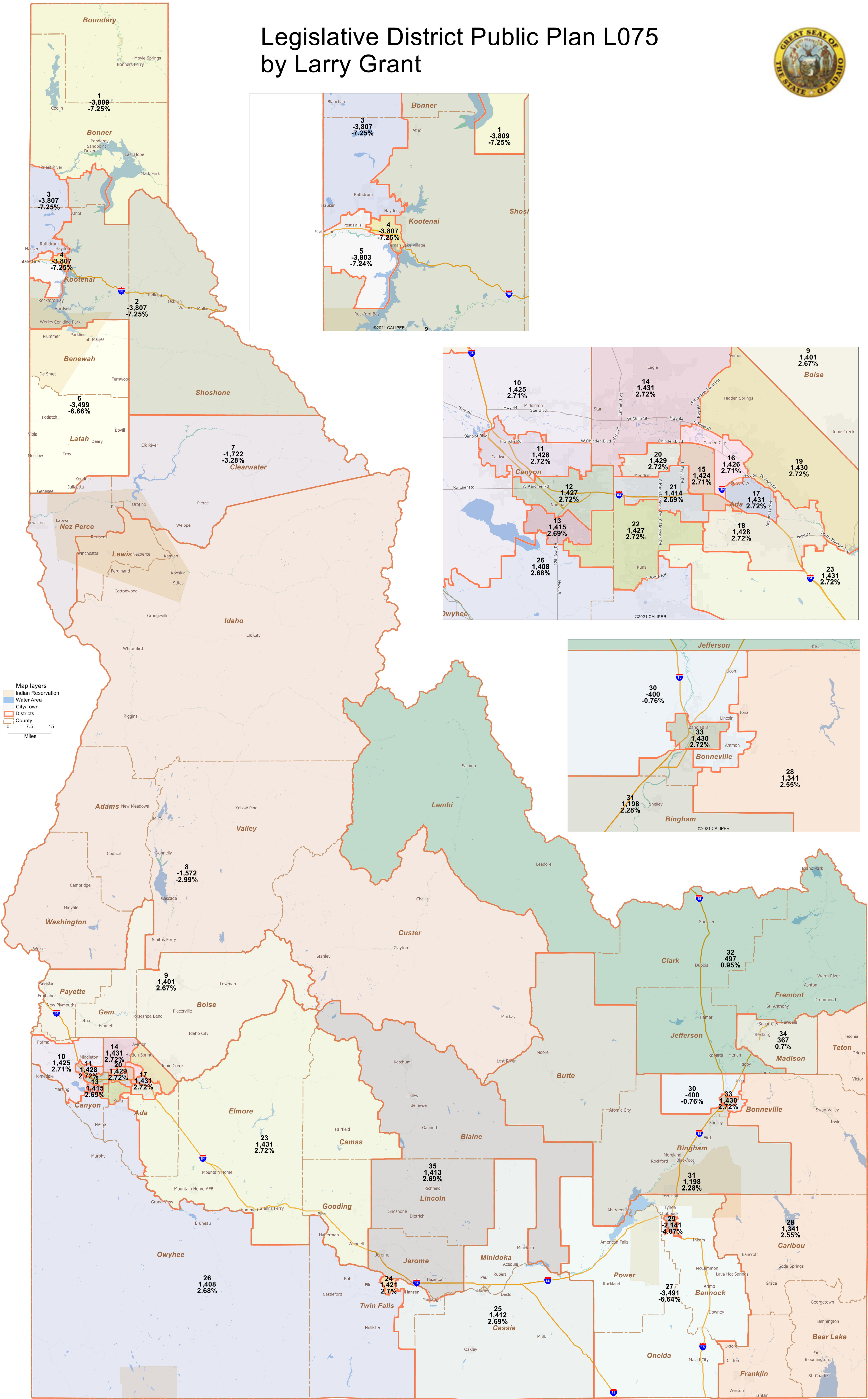
Lawrence Denney
Idaho Secretary of State
450 N. 4th Street
Boise, Idaho 83702

<u> </u>	Hand Delivery
<u> x </u>	U.S. Mail
<u> </u>	Certified Mail
<u> </u>	Facsimile
<u> x </u>	Email: elections@sos.idaho.gov

/s/ Chyvette Tiedemann
Legal Assistant

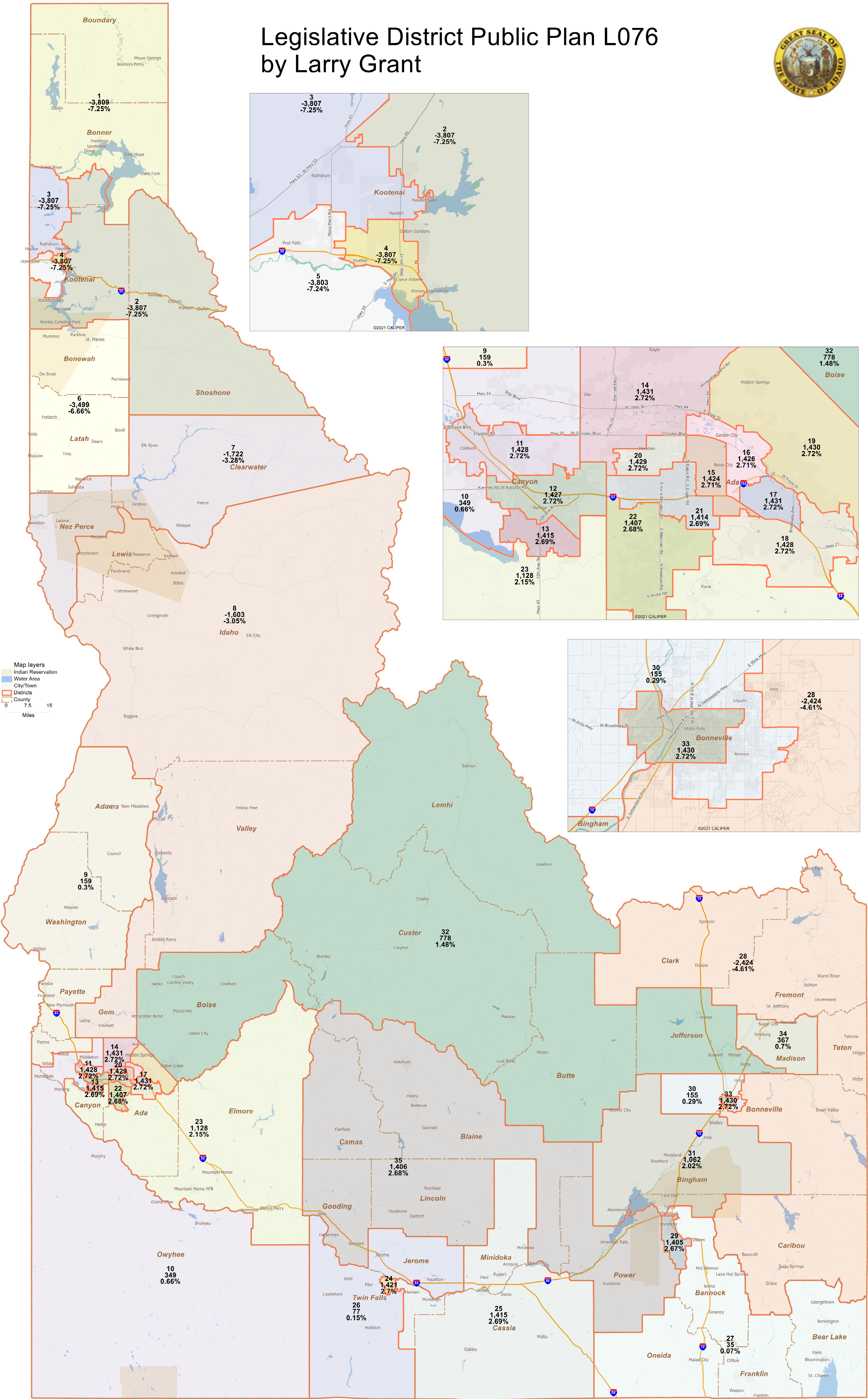
Legislative District Public Plan L075

by Larry Grant



Legislative District Public Plan L076

by Larry Grant



Legislative District Public Plan L079

by Wayne Hurst

