

Norman Semanko

A word with Parsons Behle & Latimer water attorney

BY SHARON FISHER

Earlier this year, Norman M. Semanko was appointed as an advisory council member for the non-profit law organization, Mountain States Legal Foundation. Semanko is Parsons Behle & Latimer's water law practice group expert in the Pacific Northwest region. He has more than 30 years' experience with water, environmental, natural resources, land use, public lands and regulatory issues.

Mountain States Legal Foundation undertakes matters on behalf of Western residents when confronted with federal government overreach in environmental, natural resource and Second Amendment rights. Advisory council members meet three times per year to receive briefings from foundation staff attorneys and provide expert input for cases on which the attorneys are working. The council is also tasked to track and inform the foundation's board of directors about emerging issues in the Western region related to federal legislation that could impact individuals' rights and liberties. Many of the issues Mountain States Legal Foundation handles focus on water rights, farming, ranching and public lands. Semanko's contributions to the foundation focus on natural resource and environmental law.

Semanko has also been involved in politics, including serving as chairman of the Idaho Republican Party and as Eagle City Councilman.

This interview has been edited for length and clarity.

What got you interested in water?

As a young Congressional staffer in Washington, D.C., I had the opportunity to work on various water issues and to meet Idaho water user interests. The issues of the day included the Fort Hall Water Rights Agreement, salmon, wilderness proposals and jurisdiction under the Federal Power Act. I gravitated to those areas of the law as an evening student at Georgetown University Law Center.

When I left Capitol Hill and graduated from law school, I was fortunate enough to be hired by one of Idaho's preeminent water attorneys, John Rosholt, and moved to Twin Falls. Eventually, I made my way to the Idaho Water Users Association in Boise, where I served as executive director and general counsel. That position really allowed me to blend my legal and political skill sets to advocate for water interests statewide — and throughout the West.

What led you to leave the Idaho Water Users Association?

I missed the opportunity to help individuals, businesses and other organizations solve their legal problems. That really requires full-time attention at a law firm. As a practicing attorney, I have been able to use the full tool kit available to me, whether pursuing a legislative solution in Boise or Washington, D.C.,

or litigating in state or federal court; whatever works best for the client. I work hard to try to tailor the solution to the needs of the particular client. I am still very involved with IWUA through our law firm's membership in the Association, which is certainly beneficial to my law practice. IWUA is a great organization and I am proud of the role I played in helping it grow.

What led you to move from Moffatt Thomas to Parsons Behle & Latimer?

Moffatt Thomas merged with another law firm. When that happened, I reached out to professional colleagues that I knew at Parsons Behle & Latimer, which has extensive environmental, natural resources and government relations practice areas — a great fit for me. Parsons is an Intermountain firm, established in 1882, with offices in Boise, Idaho Falls, Salt Lake City, Lehi, Reno and Missoula. The regional reach of the firm has been very beneficial to my water law practice. I also have a dedicated team of professionals to work with at the firm, which has increased my bandwidth and made my job a lot easier.

What is the Mountain States Legal Foundation?

Mountain States Legal Foundation is a nonprofit law firm based in the American West, which goes to court — even the U.S. Supreme Court — to fight for the constitutional rights of affected parties. It is focused on defending the Constitution, protecting property rights and advancing economic liberty. The foundation is governed by a board of directors and has professional staff. It also has a litigation advisory council, which I was appointed to serve on earlier this year. Our firm has a long history of participating on the council and I am privileged to be selected by our board of directors to help continue that tradition.

When was it started and how is it funded?

Mountain States Legal Foundation was founded in 1977. It represents clients pro bono and receives no government funding. It relies upon voluntary donations from those who support the foundation's mission.

House Bill 167 requires state officials to consider economic ramifications when imposing pollution regulations on farms and ranches producing manure to protect nearby communities and the environment from pollution. The bill has been promoted by the Idaho Dairymen's Association, Idaho Cattle Association, J.R. Simplot Co. and other agricultural groups. An example of some of the language in the bill includes: "Where not pro-



hibited by federal or state law, the requirements imposed on agricultural operations shall be economically feasible, based on data, studies, and other information that may be presented to the director by interested parties to the rulemaking process." What are the legal challenges to this bill if it passes the Senate?

As I read the legislation, it clarifies that the Idaho State Department of Agriculture is to use the best available science in rulemaking, with special emphasis on site-specific data, and to consider economic information. It further requires that the agency disclose the scientific information and allow for public review and comment. The goal is to ensure regulations with scientific integrity, at a financial cost that is attainable by farmers and ranchers. Given the purpose of the legislation, it comes as no surprise that it was approved by wide margins in the Idaho State Legislature — both in the House and the Senate. I am not immediately aware of any legal challenges to this bill.

What happens when growth in the southern half of the state outstrips the amount of water rights that municipalities can buy to sustain growth? Since water rights are written into the state's Constitution, who would win this fight legally, the irrigators or the domestic uses in cities?

In Idaho — as in most Western states — first in time is first in right. Senior priority water rights are entitled to their full allocated share before junior priority water rights receive any water. This certainty in the ownership of water rights helps provide a stable foundation for Idaho's water market. Rather than

lawsuits, I foresee continued use of this market and reasonable regulations set by the state on the transfer of water rights. The state is also leading the effort to explore additional supplies of water. The planned enlargement of Anderson Ranch Reservoir here in the Treasure Valley is but one example of that. Most people aren't aware of the huge amount of water that leaves Idaho each year. There is certainly room for additional water storage and other water management opportunities to help meet future demands as Idaho continues to grow.

Could something like what happened with the Las Vegas's "raid" of the carbonate aquifers of SE NV and SW UT happen with the East Snake River Aquifer and the Treasure Valley? If not, what's different about Idaho's laws that would prevent it?

Idaho has very strong water laws. One of those makes it very difficult to permanently take water from the basin of origin to another basin. It is even more difficult to permit out-of-state water transfers. If the economic fabric of the area would be damaged by allowing the water to be sent elsewhere, it isn't very likely that it would be approved by the Idaho Department of Water Resources. These kinds of laws have been upheld by the courts.

What should Idaho be doing to help preserve its aquifer?

Idaho has a lot of aquifers. The largest is the Eastern Snake Plain Aquifer. There, we have seen several settlement agreements adopted and implemented to avoid further litigation and help improve the health of the aquifer. Diversion from the aquifer has been reduced. And the Idaho Water Resource Board has been charged with leading the effort to recharge the aquifer — an average of 250,000 acre-feet per year. Private interests also conduct aquifer recharge to help meet settlement requirements. The additional water funding championed by Governor Little and approved by the Legislature this year includes a component for a large recharge project in eastern Idaho.

How is climate change going to affect Idaho's availability and use of water going forward?

Conventional wisdom — and the observations of numerous long-time water users — says that we are seeing more rain and less snow. But no two water years are exactly alike and we are always going to have droughts. The more management tools that we have available — including surface storage and ground water recharge — the more prepared we will be for this variability. Fortunately, Idaho's leadership is actively taking all of this into account, hoping for the best but planning for the worst.

— Catie Clark also contributed to this article.