

SPECIAL PROSECUTOR

THE STATE OF IDAHO

Mark R. Taylor, Prosecuting Attorney, ISB #10749

L. Scott Peterson, Chief Deputy Prosecuting Attorney, ISB #10031

Chase T. Hendricks, Deputy Prosecuting Attorney, ISB# 8604

210 Courthouse Way, Suite 220

Rigby, ID 83442

(208) 745-5888 (t)

(208) 745-7342 (f)

IJProsAtty@co.jefferson.id.us

Special Prosecutor for the State of Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON
MAGISTRATE DIVISION

STATE OF IDAHO, by and through Mark Taylor,
Esq., and the Office of the Jefferson County
Prosecuting Attorney,

Special Prosecutor

vs.

TETON COUNTY WILDLIFE ADVISORY
COMMITTEE and its members individually;
WATERWAYS RECREATION COMMITTEE
and its members individually, and TETON
COUNTY BOARD OF COUNTY
COMMISSIONERS and its members individually,

Defendants.

Case No. CV

COMPLAINT
FOR VIOLATION OF
THE IDAHO OPEN MEETING LAW

COMES NOW, the State of Idaho, by and through Mark Taylor, Esq. duly appointed
Special Prosecuting Attorney, and states and alleges violations of the Idaho Open Meeting Law by
the Defendants, as follows:

I. THE PARTIES

1. Pursuant to Idaho Code section 74-208(5), the court appointed “Mark Taylor, Esq. and the Office of the Jefferson County Prosecuting Attorney” as Special Prosecutor in this matter on February 2, 2024, “for the purpose of evaluating and prosecuting any charges that may be deemed necessary” involving the Defendants. ADMIN 41-24-1, Order for Appointment of Special Prosecutor.
2. Idaho Code states that the civil penalties for the various violations of the Open Meeting Law are to be assessed against “any member of the governing body” who violates the Open Meeting Law.” *See* I.C. § 74-208(2 through 4). Consequently, each member of the collective defendants in this matter are also defendants individually, as follows.
3. Defendant Teton Board of County Commissioners (“the Board”) is the Board of County Commissioners for Teton County (“the County”), a political subdivision of the state of Idaho; and, its three elected members, individually: Cindy Riegel, Chair, Michael Whitfield, and Bob Heneage.
4. Defendant Teton County Waterways Recreation Advisory Committee (“Waterways Committee”) is an advisory committee to the Board, created and authorized by the Board on May 9, 2022, by county resolution 2022-0509A; and, its appointed members individually: Amy Verbeten, Joe McFarlane (Chair), Kyle Ellison, Brett High, Boots Allen, Will Stubblefield (Vice Chair, Secretary), Renee Hiebert, Jeff Klausmann, Charles Woodward, John Norton, Michael Dawkins, and John or Jane Does 1-5.

The Board authorized the Waterways Committee to recommend waterway recreation management guidelines, practices, goals, policies, regulations, and resolutions,

and otherwise provide information for the purposes of waterways recreation management in the County.

5. Defendant Teton County Wildlife Advisory Committee (“Wildlife Committee”) is also an advisory committee to the Board, also created and authorized by the Board on May 9, 2022, by county resolution 2022-0509B; and, its appointed members individually: Jeff Klausmann (Chair), Kathleen O’Neil (Vice Chair), Linda Unland (Secretary), Renee Seidler, Mike Lien, Tamara Sperber, Allison Michalski, Wray Landon, and John or Jane Does 6-10.

The Board authorized the Wildlife Committee to recommend waterway recreation management guidelines, practices, goals, policies, regulations, and resolutions, and otherwise provide information for the purposes of fish and wildlife habitat management in the County.

6. The Waterways Committee and the Wildlife Committee are both under the authority and supervision of the Board.
7. The Waterways Committee and the Wildlife Committee are both agents of the Board.

II. JURISDICTION & VENUE

8. This Court has jurisdiction over this matter pursuant to Idaho Code § 74-208(6).
9. Venue is proper pursuant to Idaho Code § 74-208(6).

III. THE LAW

A. The Legal Requirements for an “Open Meeting”

10. “[I]t is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.” I.C. § 74-201.

11. I.C. § 74-204 outlines three types of meetings (regular, special, and executive) and the minimum notice that the governing body must give for each type of meeting.
12. For each of the three types of meetings, the public must be informed that a meeting will take place, and the location of the meeting, sufficiently in advance to be able to attend and observe or participate (hereinafter, “Meeting Notice”).
13. I.C. § 74-204 also mandates an agenda for each type of meeting, and a time period before the meeting by which the agenda must be provided to the public (hereinafter, “Agenda Notice”).
14. The time periods mandated under I.C. § 74-204 for Meeting Notice and Agenda Notice, for each of the three types of meetings, are summarized in this table:

<i>Type of Meeting:</i>	Regular	Special	Executive
<i>Meeting Notice:</i>	5 calendar days	24 hours	24 hours
<i>Agenda Notice:</i>	48 hours	24 hours	24 hours
<i>Other:</i>		“...unless an emergency exists”	“If only an executive session will be held”

15. The notice and agenda for any meetings must be posted “in a prominent place at the principal office of the public agency or, if no such office exists, at the building where the meeting is to be held.” *Id.* In addition, the notice and agendas shall also be posted electronically “if the entity maintains an online presence through a website or a social media platform.” *Id.* (Hereinafter, the “Posting Requirements.”)
16. The Meeting Notice, Agenda Notice, and Posting Requirements are referred to collectively herein as the “Notice Requirements.”

17. If a public meeting takes place via “telephone or video conferencing devices” then I.C. § 74-203 requires that, “at least one (1) member of the governing body...shall be physically present at the location designated in the meeting notice...to ensure that the public may attend such meeting in person.” Further, “the communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.” *Id.* (Hereinafter, these requirements are referred to as the “Audible & In Person Requirements.”)
18. I.C. § 74-205 mandates the taking of minutes at every meeting and gives the minimum requirements for the contents of the minutes taken at each type of meeting (i.e., regular, special, and executive). (Hereinafter, these requirements are referred to as the “Minutes Requirements.”)

B. Violations, Cures, & Penalties

19. Under I.C. § 74-208, a violation of the Open Meetings Law occurs whenever “an action, or any deliberation or decision-making that leads to an action occurs at any meeting which fails to comply with the provisions of [Idaho Code Title 74, Chapter 2].”
20. The consequence of violating the Open Meeting Laws is that the action taken in the unlawful meeting is “null and void.” I.C. § 74-208(1).
21. Similarly, where no action is taken in a meeting that violates the Open Meeting Laws, but there is nevertheless deliberation or decision-making at that meeting that leads to an action being taken in a later, lawful meeting, that later-taken action is likewise null and void because the deliberative and decision-making process by which the decision to take the action was reached occurred outside of public meetings. I.C. §§ 74-208(1), 74-208(7), and 74-201.

22. The penalty for each member of a governing body who conducts or participates in a meeting that violates the Open Meetings Law—unknowingly—is “a civil penalty not to exceed two hundred fifty dollars (\$250).” I.C. §§ 74-208(2).
23. If a member is found to have knowingly violated the Open Meetings Law, then the civil penalty increases “not to exceed one thousand five hundred dollars (\$1,500).” I.C. §§ 74-208(3).
24. Further, if any member of a governing body knowingly violates the Open Meetings Law again within a year of a prior violation (i.e., repeat offenders), then the civil penalty increases up to “two thousand five hundred dollars (\$2,500).”
25. I.C. § 74-208(7) outlines procedures by which unknowing violators of the Open Meetings Law and repeat offenders may avoid the imposition of the corresponding civil penalties. However, *there is no provision for avoiding the \$1,500 civil penalty for knowingly violating the Open Meetings Law.*
26. There are two paths given in I.C. § 74-208(7) to cure an Open Meetings Law.
27. The first path is the agency’s self-recognition of a violation, followed by “declaring that all actions taken at or resulting from the meeting in violation of this act void.” I.C. § 74-208(7)(a)(i) and I.C. § 74-208(7)(b).
28. The second path to cure an Open Meetings Law violation begins with a written complaint or notice to the secretary or clerk of the public agency that the agency has violated the Open Meetings Law. I.C. § 74-208(7)(a)(ii). The governing body then has 14 days after receipt of the complaint to respond publicly and either (i) acknowledge the violation and state their intent to cure it within 14 days of the public acknowledgment by declaring that all actions taken at or resulting from the meeting in violation of the law are void; or,

(ii) state that the public agency has determined that no violation has occurred and that no cure is necessary. *Id.*

29. If the public agency does not respond publicly to the complaint or notice of an Open Meetings Law violation within 14 days of receipt of the complaint or notice, then it is deemed that the public agency denies a violation. I.C. § 74-208(7)(a)(ii).
30. Taking either path to a cure bars the imposition of the \$250 civil penalty for unknowing violators. I.C. § 74-208(7)(d).
31. A repeat offender can avoid the \$2,500 civil penalty only if he or she takes the first path (i.e., self-recognition plus voiding actions). I.C. § 74-208(7)(d).
32. **The statute provides no path for a *knowing* offender to avoid the civil penalty of up to \$1,500.** *See e.g.*, I.C. § 74-208(7)(d).

IV. ALLEGATIONS OF FACT

33. The Teton County website where the public notices, agendas, and minutes are to be posted, has been modified multiple times in the last couple of years, and today is not an accurate representation or authoritative source to answer factual questions of whether a violation of the Open Meeting Law actually occurred, such as (a) whether notice of a meeting or the posting of a meeting's agenda actually occurred as far in advance as Idaho statutes require; (b) whether notice of a meeting or the posting of a meeting's agenda was actually accessible on its website prior to or on the date that the meeting occurred; or (c) any other question upon which determination of whether a violation occurred depends.
34. Some meeting agendas were posted to the website after the meeting had occurred.
35. Sometimes, a meeting notice was posted to the County's website after the meeting had occurred.

36. Sometimes, a meeting notice may have been posted on the County's website, but the same meeting's agenda (before the meeting) or minutes (after the meeting) were not posted on the County's website within required or reasonable timeframes.
37. The agenda for the first Waterways Committee meeting, which took place on June 28, 2022, erroneously noticed the meeting to occur one month later (July 28th), such that the public was not on notice that a Waterways Committee meeting would take place on June 28th. This meeting was therefore in violation of all the Notice Requirements (i.e., Meeting Notice, Agenda Notice, and Posting Requirements).
38. The first Waterways Committee agenda also failed to disclose the location of the meeting, which is a violation of the Meeting Notice provision.
39. The agenda for the August 9, 2022, Waterways Committee meeting was posted without a meeting location—only a link to join via Zoom was provided, in violation of the Audible & In Person Requirements.
40. The Waterways Committee met on October 13, 2022, without posting an agenda, in violation of the Agenda Notice.
41. The Wildlife Committee met on October 14, 2022, without meeting any of the Notice Requirements (i.e., Meeting Notice (no location provided), Agenda Notice (no agenda posted before the meeting), and Posting Requirements (meeting not posted)).
42. The Wildlife Committee met on November 2, 2022, without providing the requisite Meeting Notice.
43. The Wildlife Committee met on December 7, 2022, without providing the requisite Meeting Notice.

44. The physical agenda for the Wildlife Committee's December 14, 2022, meeting contained no meeting location; the Meeting Notice posted online for that meeting was also posted without a meeting location—only a link to join via Zoom was provided, in violation of the Audible & In Person Requirements.
45. The Wildlife Committee met again on January 4, 2023, without satisfying the Meeting Notice requirements.
46. On January 9, 2023, the Teton County Board of County Commissioners voted unanimously to approve adoption of the Natural Resource Overlay that the Wildlife committee as presented January 9, 2023, with the requirement that any parcel under consideration for technical evaluation, due to the presence of one or more Natural Resources, be evaluated for all indicator species, and that the Natural Resource Overlays be considered for an update on an annual basis.
47. The Waterways Committee met on January 12, 2023, without satisfying any of the Notice Requirements. The agenda for that Waterways Advisory Committee meeting that was ultimately posted already included the meeting's minutes on it, showing that the agenda was posted after the meeting had already taken place, in violation of the Agenda Notice requirement.
48. The Wildlife Committee met again on February 1, 2023, without satisfying *any* of the Meeting Notice requirements.
49. The Wildlife Committee met on February 22, 2023, without posting an agenda. The Meeting Notice posted online for that meeting was also posted without a meeting location—only a link to join via Zoom was provided, in violation of the Audible & In Person Requirements.

50. The Waterways Committee met on February 23, 2023, without satisfying any of the Notice Requirements. The agenda for that meeting that was ultimately posted included the meeting's minutes on it, showing that the agenda was posted after the meeting had already taken place, in violation of the Agenda Notice requirement.
51. The Wildlife Committee met on March 1, 2023, without satisfying any of the Meeting Notice requirements. The agenda for that meeting that was ultimately posted lacked a meeting location; only a link to join via Zoom was provided (after the fact), in violation of the Audible & In Person Requirements.
52. The Wildlife Committee met on April 5, 2023, without satisfying *any* of the Meeting Notice requirements. An agenda was subsequently posted to the website.
53. The Waterways Committee met on April 6, 2023, without satisfying the Notice Requirements. The agenda for that meeting that was ultimately posted included the meeting's minutes on it, showing that the agenda was posted after the meeting had already taken place, in violation of the Agenda Notice provisions.
54. The Wildlife Committee met on April 20, 2023, without satisfying *any* of the Meeting Notice requirements. An agenda was subsequently posted on the website.
55. The Wildlife Committee met on April 26, 2023, without satisfying the Meeting Notice requirements. Minutes that were subsequently posted to the website show that Commissioner Michael Whitfield was in attendance.
56. The Waterways Committee met on May 18, 2023, without satisfying any of the Notice Requirements. Although an agenda for that meeting is on Teton County's current website, there is no evidence showing that it was posted 48 hours or more before the actual meeting.

57. The Wildlife Committee met on June 7, 2023, without satisfying the Notice Requirements. An agenda and minutes were subsequently posted to the website.
58. The agenda for the Waterways Committee's meeting on June 29, 2023, was posted after the meeting had already taken place, in violation of the Agenda Notice requirement, as evidence by the fact that the agenda that was ultimately posted online also included the meeting minutes.
59. The Wildlife Committee met on July 5, 2023, without satisfying the Agenda Notice.
60. The Wildlife Committee met on August 2, 2023, without satisfying the Notice Requirements.
61. The Waterways Committee met on August 10, 2023, without satisfying the Agenda Notice, nor the Minutes Requirements.
62. The Waterways Committee met on August 17, 2023, without providing the Agenda Notice.
63. On August 22, 2023, the Wildlife Committee met without providing Agenda Notice.
64. On August 28, 2023, the Teton County Board of County Commissioners denied an application for a preliminary subdivision plat on the grounds that the applicants proposal did not include any mitigation measures for Natural Resource Overlays. In denying the application, the Board applied the January 2023 Natural Resource Overlay map that had been developed by the Wildlife Committee over the course of the prior year's meetings that violated the Open Meeting Laws.
65. On September 6, 2023, the Wildlife Committee met without providing Agenda Notice.
66. On September 21, 2023, the Waterways Committee met without providing Agenda Notice; The agenda that was ultimately posted online also included the meeting minutes

agenda, further showing that it was posted after the meeting had already taken place, in violation of the Agenda Notice requirement.

67. On October 11, 2023, the Wildlife Committee met without providing Agenda Notice.

68. On October 14, 2023, the Wildlife Committee met without satisfying the Notice Requirements.

69. On November 2, 2023, the Waterways Committee met without satisfying the Agenda Notice; even if it had been, the date on the agenda's heading was inaccurate, giving notice of the meeting on the wrong date (September 21, 2023).

70. On December 6, 2023, the Wildlife Committee met without satisfying the Agenda Notice.

71. On December 14, 2023, the Waterways Committee met without satisfying either the Meeting Notice or the Posting Requirements.

72. On January 10, 2024, the Wildlife Committee met without satisfying the Agenda Notice.

73. On January 17, 2024, Curt Behle, a Teton County citizen, sent an email to the Teton County Board of County Commissioners, with Prosecuting Attorney, Bailey Smith, in copy, alleging that the Teton County Wildlife Advisory Committee had violated the Open Meeting Law.

74. On information and belief, on or about January 23, 2024, County Manager Dan Reyes posted approximately thirty entries on Teton County's website associated with the Wildlife Committee, none of which had been previously available to the public on Teton County's website.

75. On January 29, 2024, the Wildlife Committee met without satisfying the Agenda Notice.

76. On January 31, 2024, the Board of County Commissioners held a special meeting that included an executive session but did not post an agenda for it at least 24 hours before the special meeting, in violation of the Agenda Notice.
77. On January 29, 2024, the Wildlife Committee met without satisfying the Agenda Notice.
78. On February 5, 2024, the Teton County Board of County Commissioners (“the Board”) met to (among other agenda items) cure the Open Meeting Law Violations of the Wildlife and Waterways Committees.
79. As part of its attempt to cure the Committees’ Open Meeting Law violations, the Board repealed the Natural Resource Overlay map adopted on January 9, 2023, that was based on the recommendation of the Teton County Wildlife Advisory Committee.
80. *Every Open Meeting Law violation that occurred after February 5, 2024, when the Board self-recognized the prior violations, constitutes a **repeat** violation under I.C. § 74-208(4).*
81. *Every Open Meeting Law violation that occurred after February 5, 2024, when the Board self-recognized the prior violations, constitutes a **knowing** violation under I.C. § 74-208(3).*
82. On February 7, 2024, the Wildlife Committee met without satisfying the Agenda Notice.
83. On February 20, 2024, the Wildlife Committee met without satisfying any of the Notice Requirements.
84. Although the after-published, February 20, 2024, Wildlife Committee agenda included an action item to cure prior violation of the Open Meeting Laws, the minutes of the meeting show that the Committee failed to actually cure its Open Meeting Law violations because the Committee failed to declare “that all actions taken at or resulting from the meeting in

violation of this act [i.e., the Open Meeting Law] void” as required to cure a violation under I.C. § 74-208 (7) (b).

85. Specifically, the Wildlife Committee never voided its January 2023 Natural Resource Overlay map.

86. On March 6, 2024, the Wildlife Committee purported to retroactively approve the minutes of its October 14, **2022**, meeting—one of the meetings that had violated the Open Meeting Laws almost two years earlier. (¶41, *supra*).

87. On information and belief, the Wildlife Committee’s March 6, 2024, approval of the October 14, 2022, meeting minutes was done in an invalid attempt to reverse or undo the nullification of that meeting that occurred as part of the cure for that meeting being held in violation of the Open Meeting Law.

88. The Wildlife Committee has used its 2024 approval of the October 14, 2022, meeting minutes as an excuse for the Committee to avoid repeating or replicating the presentations, deliberations, and decisions that were made during that nullified and voided 2022 meeting.

89. The present-day Teton County website indicates that all of the Wildlife Committee meetings in held in 2022 were “void,” *except for the October 14, 2022, meeting*, which, on information and belief, Teton County claims is now a valid meeting because of the Wildlife Committee’s subsequent (on March 6, 2024) approval of the October 14, 2022, meeting minutes , and despite the October 14, 2022 meeting having voided it on February 5, 2024, as part of the cure.

90. On information and belief, in consequence of the Wildlife Committee approving the October 14, 2022, meeting minutes, the Wildlife Committee has continued to rely on the information, deliberations, and decisions made at that unlawful and voided meeting.
91. On March 7, 2024, the Waterways Committee met “to ‘cure’ actions taken by the Waterways and Recreation Advisory Committee during an improperly notice meeting.” Waterway Committee Meeting Minutes, March 7, 2024.
92. The Waterways Committee did not adequately cure its Open Meeting Law violations.
93. The Waterways Committee acknowledge a violation for only for a single, unspecified meeting, and did not self-recognize the totality of its Open Meeting Law Violations as required to cure a violation under I.C. § 74-208 (7) (b).
94. The Waterways Committee failed to declare “that all actions taken at or resulting from the meeting in violation of this act [i.e., the Open Meeting Law] void” as required to cure a violation under I.C. § 74-208 (7) (b).
95. Despite the County Commissioner’s claimed repeal of the Natural Resource Overlay that is the work product of more than a year’s worth of decisions and deliberations that occurred in violation of the open meeting laws, the Teton County Planning & Zoning department has continued to apply the January 2023 Natural Resource Overlay in its consideration of applications for proposed land division, development, special use, and certain building permits within Teton County, Idaho.
96. Despite the Wildlife Committee’s claimed cure on February 20, 2024, the Wildlife Committee has retained the Natural Resource Overlay that it developed in the course of its meetings in 2022-2023.

97. On information and belief, despite the Wildlife Committee's claimed cure on February 20, 2024, the Wildlife Committee has subsequently proposed the same or similar Natural Resource Overlay for adoption by the Board of Teton County Commissioners without doing over in 2024 the hearings, meetings, deliberations and decisions that led to the map overlay's previous creation in 2022.
98. On March 1, 2024, the Board held a special meeting without publishing an agenda, in violation of the Agenda Notice provisions.
99. On March 4, 2024, the Board held another special meeting without satisfying the Agenda Notice.
100. On information and belief, June 12, 13, and 14, 2024, the Board held special meetings three consecutive days in a row without satisfying the Agenda Notice for any of them prior to the meetings. Agendas were subsequently posted to Teton County's website on its meeting agenda and minutes archive page.
101. On information and belief, the Board has held other special meetings without satisfying the Agenda Notice.
102. On information and belief, Teton Valley News, and particularly reporter Danielle Clegg, has requested notification of special meetings in or around January 2024, pursuant to I.C. § 74-204(2) of the Open Meeting Law; however, Teton County has failed to notify Teton Valley News of some of its special meetings this year, in violation of § 74-204(2).
103. On information and belief, on April 18, 2024, the Waterways Committee voted to add a new member to the committee, but this action item was not on the agenda for that meeting.

104. The Wildlife Committee's meeting minutes for the January 10, 2024, meeting are mislabeled as the meeting minutes for January 10, 2023, in violation of the Minutes Requirements.
105. Teton County has represented that, despite receiving an evidence preservation letter from the Office of the Special Prosecutor, the County did not thereafter retain and preserve from destruction its complete records of when (or whether) meetings were noticed and agendas posted on Teton County's official website.
106. Teton County has failed to provide evidence that any of its meetings since February 7, 2024 (the last day for which the County provided data to the special prosecutor) satisfied any of the Notice Requirements of the Open Meeting Laws.

V. PRAYER FOR RELIEF

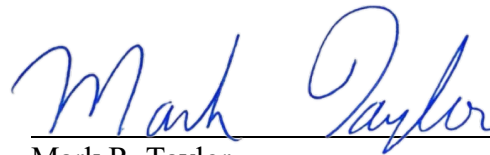
WHEREFORE, the State prays for judgment against the Defendants, as follows:

1. For a civil penalty of up to two hundred fifty dollars (\$250) assessed against each Defendant, individually, for each uncured instance where he or she conducted or participated in a meeting that violated the Open Meetings Law (whether knowingly or unknowingly), pursuant to I.C. § 74-208(2).
2. For a civil penalty of up to one thousand five hundred dollars (\$1,500) assessed against each Defendant, individually, for each instance where he or she knowingly violated the Open Meetings Law, regardless of whether the violation was in any instance cured, pursuant to I.C. §§ 74-208(3).
3. For a civil penalty of up to two thousand five hundred dollars (\$2,500) assessed against each Defendant, individually, for each instance where he or she knowingly violated the Open Meetings Law again within a year of February 5, 2024, when the Board admitted to

committing prior violations of the Open Meeting Law; or within a year of the date on which the individual Defendant's respective committee admitted to committing prior violations of the Open Meeting Law, whichever is later.

4. For a decree that the Wildlife Committee's March 6, 2024 approval of its October 14, 2022 meeting minutes did NOT, in anyway, nor under any legal theory, reverse, mitigate, avoid, or otherwise undo the prior nullification of that October 2022 meeting by any Defendant's cure, or attempt to cure, the violations of the October 14, 2022 meeting; in other words, a decree that the October 14, 2022 meeting was, and has remained, null and void along with the other meetings that were nullified and voided by the various Defendants' cures.
5. Any other relief as the court deems just and equitable.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.



Mark R. Taylor
SPECIAL PROSECUTOR
PROSECUTING ATTORNEY
JEFFERSON COUNTY, IDAHO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 2024, a true and correct copy of the foregoing was electronically delivered to the following person(s):

Kim Keeley
Teton County Clerk
kkeeley@tetoncountyidaho.gov

- By mail
- By personal delivery
- By fax
- By email
- By e-service

SA
Office of the Prosecuting Attorney