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DEPT. OF LANDS
JUL 15 2019
BOISE, IDAHO

BEFORE THE STATE BOARD OF LAND COMMISSIONERS

SHARLIE-GROUSE NEIGHBORHOOD
ASSOCIATION, INC.,

Petitioner,

vs

IDAHO STATE BOARD OF LAND
COMMISSIONERS,

Respondent,

and

PAYETTE LAKES COTTAGE SITES
OWNERS ASSOCIATION, INC.; and
WAGON WHEEL BAY DOCK
ASSOCIATION, INC.,

Intervenor-Respondents.

RESPONDENT'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION

Respondent Idaho State Board of Land Commissioners (“Land Board” or “Board”) submits the following reply to the Response Brief in Opposition to Land Board’s Motion for Summary Judgment filed by the Sharlie-Grouse Neighborhood Association, Inc. (“SGNA”).

II. ARGUMENT

1. ANY DECLARATORY RULING ISSUED BY THE LAND BOARD CANNOT EXCEED THE LIMITED AUTHORITY VESTED IN THE BOARD BY IDAHO CODE § 67-5232.

SGNA accuses the Land Board of “digging in its heels” to avoid addressing the issues raised by SGNA, as if the Board could choose to proceed to the merits if it so desired. That is not how jurisdiction works. “[A] judgment by a tribunal without authority, or which exceeds or lies beyond its authority, is necessarily void, and may be shown to be so in collateral proceedings, even though it be a court of general jurisdiction, because no authority derived from the law can transcend the source from whence it came” *Wright v. Atwood*, 33 Idaho 455, 462, 195 P. 625, 627 (1921) (citations omitted). The same principles apply to agencies: “[A]n administrative order may generally be collaterally attacked when the issuing agency lacks jurisdiction over the matter considered” *Idaho Power Co. v. Idaho Pub. Utilities Comm’n*, 102 Idaho 744, 749, 639 P.2d 442, 447 (1981) (quoting *Utah-Idaho Sugar v. Intermountain Gas Co.*, 100 Idaho 368, 374, 597 P.2d 1058 (1979)).

Here, the Board, far from ducking the issue, is merely fulfilling its obligation to ensure its own jurisdiction. *See, e.g., Tower Asset Sub Inc. v. Lawrence*, 149 Idaho 621, 623, 238 P.3d 221, 223 (2010) (the court must always ensure its own jurisdiction). For the reasons explained below

and in the Land Board's prior briefings of record, Idaho Code § 67-5232 cannot be used as a vehicle to avoid jurisdictional limits on judicial review of agency actions.¹

2. IF SGNA WAS AGGRIEVED BY THE LAND BOARD'S 2013 DECISION TO CONVEY ROADS AND COMMON AREAS TO THE PAYETTE LAKE COTTAGE SITE OWNERS ASSOCIATION, ITS EXCLUSIVE REMEDY UNDER THE IDAHO ADMINISTRATIVE PROCEDURE ACT WAS TO SEEK JUDICIAL REVIEW, WHICH WAS READILY AVAILABLE TO IT.

SGNA seeks a declaratory ruling in order to revive its objections to the Land Board's 2013 decision denying SGNA's request for ownership and control of the roads and common areas, including Community Beach, in the Sharlie-Grouse neighborhood. It is likely that SGNA's ultimate goal through this administrative proceeding is to obtain judicial review of the Land Board's 2013 action. Such review would otherwise be barred by the jurisdictional limits of Idaho Code § 67-5273, which requires petitions for review of final agency actions to be presented to a district court within twenty-eight days of the action. Idaho Code § 67-5273(3).

If the Legislature had intended declaratory rulings to be used as a vehicle to challenge the validity of past agency actions, it would have been an easy matter for the Legislature to authorize such rulings. They did not. Rather, they purposefully limited the scope of declaratory rulings, as follows: Idaho Code § 67-5232 authorizes agencies to determine the "applicability" of statutes and agency rules, and § 67-5255 authorizes agencies to determine the "applicability of any order issued by the agency." Idaho Code §§ 67-5232(1), 5255(1). The latter statute is particularly telling. If an agency can only determine the "applicability" of its past orders, and not their validity, then what is the basis for adjudicating the validity of other past agency actions? It cannot be found

¹ The Land Board incorporates by reference herein, in their entireties, Respondent's Motion for Summary Judgment and Supporting Memorandum ("**Resp't MSJ**") and the Affidavit of Counsel in Support of Respondent's Motion for Summary Judgment ("**Resp't MSJ Aff. of Counsel**"), both filed April 15, 2019; Respondent's Memorandum in Opposition to SGNA's Motion for Summary Judgment ("**Resp't Opp'n to SGNA MSJ**") and the Affidavit of Steven W. Strack ("**Strack Aff.**"), both filed June 14, 2019.

in the plain text of Idaho Code § 67-5232, which, analogous to § 67-5255, is limited to determination of the “applicability” of statutes and rules administered by the agency.

Nor can SGNA successfully argue that the Legislature intended agency rulings addressing the “applicability” of statutes, rules, and orders to include the authority to determine whether past agency actions violated the law. In contrast to the “applicability” language of Idaho Code § 67-5232, the provisions for judicial review of final agency actions are clear and straightforward. Courts may “review” agency actions in order to determine whether they are “in violation of constitutional or statutory provisions.” Idaho Code § 67-5279(2)(a). Likewise, in contrast to declaratory rulings by agencies, which can only determine the “applicability” of rules, a declaratory judgment by a court may determine both the “validity or applicability” of an agency rule. Idaho Code § 67-5278. If the Legislature had intended agency declaratory rulings to provide a similar review function, they surely would have used language in § 67-5232 or § 67-5255 allowing agencies to determine the validity of past actions.

The Legislature’s choice to limit declaratory rulings to the “applicability” of statutes, rules and agency orders must be respected. The only provisions for “reviewing” the validity of final agency actions are found in Idaho’s Administrative Procedure Act (“APA”), at Idaho Code §§ 67-5270 through 5279 – statutes providing for judicial review. “It is a universally recognized rule of construction that, where a constitution or statute specifies certain things, the designation of such things excludes all others.” *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 642, 132 P.3d 397, 399 (2006) (quoting *Local 1494 of Int’l Ass’n of Firefighters v. City of Coeur d’Alene*, 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978)). The APA, by providing for judicial review of final agency actions, and omitting any reference to “review” in the statute authorizing

declaratory rulings, expressed its determination that declaratory rulings are not to be used as a substitute for judicial review.

In short, the judicial review procedures of the APA “are the exclusive means by which [an agency] decision can be challenged.” *Idaho State Speech & Hearing Servs. Licensure Bd. v. Brown*, No. 35393, 2009 WL 9151503 at *5 (Idaho Ct. App. Oct. 16, 2009). SGNA failed to seek judicial review of the Land Board’s 2013 decision and cannot evade the jurisdictional limits of the APA by contorting the “applicability” language of § 67-5232 to include review of past agency actions. Nor can SGNA evade the jurisdictional time limits in the APA: “A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law.” Idaho Code § 67–5273(3). “Requirements for timely filing of an appeal are jurisdictional.” *In re Quesnell Dairy*, 143 Idaho 691, 693, 152 P.3d 562, 564 (2007).

Incredibly, SGNA asserts it is not seeking to evade the twenty-eight day jurisdictional time limit for judicial review because the Board action it challenges was “not appealable.” (SGNA Resp. Br. § II.A.) SGNA’s argument does not survive even minimal scrutiny – the Board’s October 15, 2013 approval of Covenants, Conditions and Restrictions (“CC&Rs”) for the Southwest Payette Cottage Sites Subdivision (“Payette Lake Subdivision”), and its concurrent rejection of SGNA’s request to have the nearby Community Beach and roads conveyed to it, was unquestionably an appealable final agency action, a fact ably demonstrated on the face of SGNA’s Petition for Declaratory Ruling. (Petition, ¶¶ 5, 6, 7, 10, 11, 13, 22).

The gravamen of SGNA’s Petition is that the Land Board had a legal duty to sell the roads and common areas within the Payette Lake Subdivision by public auction. If such is SGNA’s assertion, it was free to bring it at the time the Board adopted the recommendation of the Idaho

Department of Lands to “approve the Covenants, Conditions and Restrictions . . . for the cottage site developments in the Southwest Payette area.” (Resp’t MSJ, § III. ¶¶ 5-14, 18; Resp’t MSJ Aff. of Counsel, Ex. 6, Resp’t 205.)² The recommendation noted that upon implementation the Land Board would “transfer roads and common areas to an association.” (Resp’t MSJ Aff. of Counsel, Ex. 6, Resp’t 204.) The recommendation notes SGNA’s “request to have the roads and lake access area within their neighborhood boundaries deeded to the Sharlie-Grouse Neighborhood Association,” and recommended denial of the request because “the State believes the currently proposed plan for Southwest Payette Lake is in the best interest of the State endowment lands, and does not intend to further fragmentize ownership or control of the roads, easements, and common areas among other homeowners associations.” (Resp’t MSJ Aff. of Counsel, Ex. 6, Resp’t 204.)

The Board then took the following action:

A motion was made by Attorney General Wasden that the Board approve the Department's recommendation with the addition that the Department be directed to prepare a report to the Board presenting options for either leasing or disposing of the five lots adjacent to Syringa Park. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0.

(Resp’t MSJ Aff. of Counsel, Ex. 33, Resp’t 0541 (Bd. Min. Oct. 15, 2013)).

The APA authorizes judicial review of “final agency action,” defined in Idaho Code § 67-5201(3)(c), to mean “[a]n agency’s performance of, or failure to perform, any duty placed on it by law.” SGNA argues that the Board’s decision to convey the roads and common areas by quitclaim deed to the Payette Lake Cottage Site Owners Association (“PLCSOA”) was not an “agency action” because “the Land Board was under no legal duty to file CC&Rs nor to issue any deeds.” (SGNA Resp. Br. 8.) Once again, SGNA constructs a hyper-technical argument by isolating

² Board Exhibits 1 through 6 were filed as attachment to the Affidavit of Counsel in Support of Respondent’s Motion for Summary Judgment, filed April 15, 2019. Exhibits 7 through 33 were filed as attachments to the Affidavit of Steven W. Strack, filed June 14, 2019.

portions of the Land Board’s action for which it claims there is no specific statutory authority, and ignoring the fact that the Board was acting pursuant to its constitutional “duty . . . to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted.” Idaho Const. art. IX, § 8.³

SGNA’s focus on the claimed lack of a specific duty to impose CC&Rs and convey the roads and common areas also ignores the central argument made by SGNA – that the Land Board had a legal duty to sell the roads and common areas by auction, and that the Board’s October 15, 2013, decision to adopt the CC&Rs and quitclaim the roads and common areas to the PLCSOA violated that duty. The APA’s definition of “agency action” includes not only performance of legal duties, but also the failure to perform a legal duty. Thus, SGNA’s allegation that the Land Board failed to carry out its duty of conveying lands only by public auction was a claim clearly reviewable as a final agency action under the APA. Once the Board determined to convey the lands by quitclaim deed without an auction the jurisdictional time limit was triggered. This is amply demonstrated by the decision in *Idaho Watersheds Project v. State Bd. of Land Comm’rs*, 128 Idaho 761, 918 P.2d 1206 (1996) (“*IWP P*”). There, the plaintiff alleged that the Board’s issuance of a grazing lease violated the “constitutional and statutory mandate that the Board conduct an auction.” *Id.* at 766, 918 P.2d at 1211. The plaintiff timely appealed the Board’s

³ In section III.E. of its Memorandum in Opposition to SGNA’s Motion for Summary Judgment, the Board thoroughly briefed the statutes and judicial precedent governing its subdivision of land within the Payette Lake Subdivision, undertaken as the Board exercised its constitutional “duty . . . to provide for the location, protection, sale or rental of all the lands . . . under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted.” Idaho Const. art. IX, § 8.

decision to the district court, and the court heard the matter, employing the APA standard of review in Idaho Code § 67-5279. *IWP I*, 128 Idaho at 7603-64, 918 P.2d at 1208-09.

Similar to the situation in *IWP I*, SGNA alleges that “[t]he Board failed to abide by the statutes and laws governing the disposition of state lands when it conveyed the State lands to PLCSOA.” (Petition, ¶ 7.) Such an allegation was the proper subject for a petition for judicial review, as demonstrated by the *IWP I* decision.

In sum, SGNA had the opportunity to seek judicial review of the Land Board’s decision of October 15, 2013, to convey the subdivision roads and common areas to the PLCSOA, and failed to do so within the 28-day jurisdictional time limit set forth in the APA. SGNA’s failure was dispositive, and cannot be avoided by now warping the wood framing the issues of which it seeks review as an action for declaratory ruling.

3. DECLARATORY RULINGS WERE NEVER INTENDED TO ALLOW REVIEW OF A PAST AGENCY ACTION THAT SHOULD HAVE BEEN CHALLENGED VIA JUDICIAL REVIEW.

If a party could evade the jurisdictional time limit of Idaho Code § 67-5273 simply by filing a petition for declaratory ruling years after the fact, then appealing the result, the time limit for judicial review would be meaningless. For such reason, courts in other jurisdictions have repeatedly held that petitions for declaratory rulings cannot be used to challenge past agency actions and thus avoid statutory limits on the appeal of such actions.⁴

For example, in *Matter of Sierra Club v Power Auth. of State of N.Y.*, 609 N.Y.S. 599 (N.Y. App. Div. 1994), the petitioners sought to challenge a contract of the Power Authority, but failed to do so within New York’s four-month jurisdictional time limit for review of agency actions. Instead, they “requested [a] declaratory ruling from [the] Power Authority concerning applicability

⁴ In addition to the New York decision discussed here and the Hawaii decision presented in the Board’s opening memorandum, the Board discussed cases from Idaho, Iowa and Vermont in section III.A. of its Memorandum in Opposition to SGNA’s Motion for Summary Judgment.

[of certain New York environmental review laws] to the contract,” which was denied by the Power Authority. The petitioners then argued on judicial review that the court could review its challenges to the contract since the four-month period for review “should run from denial of the request for administrative declaration.” *Id.* The court rejected this argument, finding that the petitioner’s “[r]equests for declaratory rulings are viewed as subterfuges to revive time-barred claims when [the] challenge is actually to prior administrative action.” *Id.*

Matter of Sierra Club not only affirms that declaratory rulings cannot be used to challenge past agency actions, it disposes of another argument made by SGNA – that the prohibition on use of declaratory rulings to review past agency actions only applies when the past agency action was a contested case resulting in an order. (SGNA Resp. Br. 11-12.) The action at issue in *Matter of Sierra Club* was not a contested case or adjudicatory proceeding, it was agency approval of a contract at a public meeting. *Id.* Likewise, SGNA misapplies the Hawaiian lines of cases holding that declaratory rulings cannot be used “to allow review of concrete agency decisions for which other means of review are available.” *Citizens Against Reckless Dev. v. Zoning Board of Appeals of the City & Cty. of Honolulu*, 159 P.3d 143 (Hawaii 2007) (“*CARD*”). The agency action that the plaintiffs in *CARD* sought to have reviewed in their petition for declaratory ruling was not a contested case or an order issued after hearing. Rather, it was the issuance of a conditional use permit by the agency director without hearing.⁵ The court found that by issuing the permit, the agency had made a concrete decision because it had “already spoken as to the ‘applicability’ of the relevant law to the factual circumstances at hand – implicitly or explicitly it has found the relevant legal requirements to be met.” *Id.* at 156.

⁵ One of the issues that the *CARD* plaintiffs sought to raise in their petition for declaratory ruling was that the director did not consider any evidence when approving the application. 159 P.3d at 149.

SGNA attempts to distinguish the Hawaiian cases by asserting that no “concrete decision” was ever made here because the Land Board never “issued a ruling on whether (and why) an auction was required.” (SGNA Resp. Br. 11.) SGNA provides no case law to support its assertion that a legal ruling is necessary for an agency action to be concrete (*i.e.*, final).⁶ Even were this deficiency ignored, it is irrefutable that the Land Board made a “concrete decision” to convey the roads and common areas to the PLCSOA without an auction, and implicit in the Land Board’s decision was that the conveyance met all legal requirements. This is borne out by the fact that Governor Otter explicitly inquired of the Board’s legal counsel whether the conveyance could take place without a public auction, and was informed that it could. (Resp’t MSJ Aff. of Counsel, Ex. 6, Resp’t 304.) In short, the Land Board could not have proceeded to convey the property without applying the laws to the facts before it. It is difficult to imagine a more “concrete” decision. The fact that SGNA now asserts that the Land Board acted without authority does not mean that no concrete decision was made – it simply means that the Land Board considered its authority and arrived at a different decision than that now asserted by SGNA.

⁶ SGNA also errs in asserting that a quote in the Land Board’s opening brief from Professor Frank Cooper does not appear in Professor Cooper’s treatise on state administrative law. (SGNA Resp. Br. n.11.) SGNA’s confusion may arise from the fact that two quotation marks were inadvertently omitted. When corrected, the quote should have, and does, read as follows (corrected quotation marks in bold):

Commentary on the 1961 Model Act described the declaratory ruling provision as a means of “obtaining advisory opinions from agencies as to the meaning of agency rules and the applicability thereof” in particular factual circumstances, so that a person proposing a course of action could obtain “**“a binding declaration concerning the consequences of his proposed action.”**” Frank E. Cooper, 1 State Administrative Law 239-40 (1965) (quoting Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess. 30-33 (1941)).

SGNA further asserts that “the Land Board’s reference to the above-cited Senate document is incorrect,” but that is the document referenced in the Cooper treatise.

SGNA’s argument that the prohibition on using declaratory rulings to review past agency actions should only apply to decisions made via contested cases also ignores Idaho Code § 58-122, which provides that:

[W]hen the state board of land commissioners is exercising its duties and authorities concerning the direction, control or disposition of the public lands of the state pursuant to sections 7 and 8, article IX, of the constitution of the state of Idaho, such actions shall not be considered to be contested cases as defined in subsection (6) of section 67-5201, Idaho Code, and section 67-5240, Idaho Code, unless the board, in its discretion, determines that a contested case hearing would be of assistance to the board in the exercise of its duties and authorities.

Idaho Code § 58-122; *see also* IDAPA 20.01.01.050.03 (“Board meetings are conducted informally and are not contested case hearings”). The Board is undoubtedly authorized to take final agency actions and make concrete decisions without initiating contested case procedures. The common legal analysis in the cited decisions from other jurisdictions – finding that declaratory rulings are not properly raised to challenge past agency decisions (regardless of the nature of the case) – is equally applicable to Land Board decisions. To hold otherwise would be to ignore legislative recognition that the Land Board can render final decisions outside of contested case procedures.

4. THE LAND BOARD DID NOT INITIATE A CONTESTED CASE.

SGNA asserts that the Land Board, in response to SGNA’s Petition, elected to initiate a contested case; thereby, rendering moot the issue of whether the Board had authority, under the terms of Idaho Code § 67-5232, to hear the issues raised by SGNA. SGNA further asserts that by initiating a contested case, the Board determined that the issue “merits evaluation and determination.” (SGNA Resp. Br. 7). This assertion skews the procedural record in this matter and is simply wrong in its misstatement of the APA.

As SGNA points out, Idaho Code § 67-5232 provides that a petition for a declaratory ruling “does not preclude an agency from initiating a contested case in the matter.” Idaho Code § 67-5232(1). This provision simply recognizes that when a petitioner seeks a determination of rights that are more appropriately handled through a contested case proceeding, the agency may initiate such proceedings. For example, if a person petitioned for a declaratory ruling that they were entitled to an encroachment permit, the Land Board could initiate a contested case and require such person to first file the required application and supporting documents.

SGNA asserts that the Land Board made such a determination here and “affirmatively decided to initiate a contested case.” (SGNA Resp. Br. 7.) Land Board records belie SGNA’s assertion. SGNA’s Petition was presented to the Land Board at its July 17, 2018 meeting. The minutes of the meeting provide as follows:

BOARD ACTION: A motion was made by Attorney General Wasden that the Board grant authority for the Idaho Department of Lands' Director to appoint a hearing officer to conduct the matter under the APA in regards to the Sharlie-Grouse Neighborhood Association Petition for Declaratory Ruling and that the hearing officer provide a recommended order to the Board. Controller Woolf seconded the motion. Governor Otter clarified that APA is the Administrative Procedures Act. The motion carried on a vote of 5-0.

State Bd. of Land Comm’rs, Meeting Min. of July 17, 2018, *available at* <http://www.idl.idaho.gov/land-board/lb/minutes-archive/2018/071718-final-minutes-land-board.pdf> (emphasis added).

Nothing in the Board’s action initiated a contested case. Rather, Attorney General Wasden’s motion was very specific that the Hearing Officer should “conduct the matter under the APA in regards to the . . . Petition for Declaratory Ruling.” *Id.* The Attorney General’s motion made no reference to a contested case.

Likewise, the Board’s direction to the Hearing Officer, in both its motion and its Notice of Appointment of Hearing Officer to issue a “recommended order” does not transform this action

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into a contested case. The applicable rule of procedure, IDAPA 20.01.01.402, provides that: “The agency’s decision on a petition for declaratory ruling on the applicability of any statute, rule, or order administered by the agency is a final agency action decided by order.”

While it is true that “[c]ontested case’ means a proceeding which results in the issuance of an order,” Idaho Code § 67-5201(6), it does not follow that the directive to issue declaratory rulings by order transforms the proceeding into a contested case. An order can be limited to the determination of the rights, duties, privileges, immunities, or other legal interests of one or more specific persons that fall within the limited scope of Idaho Code § 67-5232 – *i.e.*, a determination of the “applicability” of statutes or rules as they apply to the legal interests of the petitioner. This limitation is stated on the face of IDAPA 20.01.01.402, which provides that: “The order issuing the declaratory ruling shall contain ... the following paragraph[]: ‘This is a final agency action issuing a declaratory ruling.’” IDAPA 20.01.01.402.02.a (emphasis added).

Finally, SGNA’s assertion that the Land Board initiated a contested case cannot be reconciled with Idaho Code § 58-122. As discussed earlier, § 58-122 recognizes that Land Board decisions are not considered contested cases, “unless the board, in its discretion, determines that a contested case hearing would be of assistance to the board in the exercise of its duties and authorities.” Idaho Code § 58-122. SGNA fails to identify the required determination by the Land Board that a contested case would be of assistance to it in this matter. The Land Board authorized the Hearing Officer to conduct a hearing under the APA and to provide the Land Board with a recommended order issuing a declaratory ruling. Nothing in the Land Board’s action or in the Land Board’s rules of procedure authorize the Hearing Officer to go further and conduct a contested case.

6. THE LAND BOARD’S RECENT DECISION TO RESCIND A PRESENT-DAY TERM LEASE DUE TO FACTUALLY DISTINCT CIRCUMSTANCES DOES NOT SUPPORT SGNA’S ARGUMENT THAT DECLARATORY RULINGS CAN BE USED TO CHALLENGE PAST BOARD ACTIONS.

Standing on a factually deficient foundation, SGNA asserts that the Land Board’s recent rescission of a lease somehow provides precedent for its sought-after declaratory ruling that the Board’s 2013 final action, authorizing the 2014 and 2015 conveyance of roads and common areas to the PLCSOA, was void and can be unilaterally undone by the Board through issuance of a declaratory ruling. Yet again, SGNA misconstrues the facts, the Board’s arguments of record, and the applicable law.

The Land Board has not asserted that it is prohibited from taking action to rescind a conveyance if such conveyance was potentially made in violation of law and, therefore, void. What the record in this matter clearly demonstrates is that the Board must utilize the legal processes that the Legislature has established for revoking conveyances. *See, e.g.*, Idaho Code § 6-401 (actions to quiet title); Idaho Code § 10-1202 (court may issue declaratory judgment regarding validity of deed). While the Board can initiate a legal action to seek revocation of a past conveyance, its authority to do so is grounded in its constitutional and statutory authorities, not in the APA’s authority to issue declaratory rulings. *See* Idaho Const. art. IX, § 7 (the Land Board “shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law”). The mere fact that the Board has authority to seek revocation of a past transaction does not render such transaction subject to challenge through a petition for declaratory ruling.

Regarding the Land Board’s April 16, 2019, action to “rescind Lease M500031 on the basis that the Idaho Department of Lands failed to comply with constitutionally and legally required processes in issuing the lease,” (SGNA Resp. Br. Attach A, 8-9), nothing therein supports SGNA’s assertions that a petition for declaratory ruling can be used to challenge Board conveyances made

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over four years before the petition's filing. In the case of Lease No. M500031, nearby property owners who objected to the lease did not petition for a declaratory ruling. Instead, they expressed their concerns to the Board shortly after the lease's issuance, and the Board took those concerns under advisement in exercising its discretionary authority to rescind the lease approximately seven months after its execution. Such rescission is distinct from SGNA's Petition, which seeks to have the Board declare that the conveyance to the PLCSOA is void as a matter of law. In the case of Lease No. M500031, the Board did not issue a declaratory ruling on the legality of the lease, but acted discretionally to rescind the lease and direct Department staff to negotiate a "mutually agreeable settlement with the current leaseholder." (SGNA Resp. Br. Attach A, Land Bd. Min. (Apr. 16, 2019)).

If anything, the Board's actions regarding Lease No. M500031 confirm that SGNA's opportunity to challenge the Board's 2013 decision to convey the Sharlie-Grouse area roads and Community Beach to the PLCSOA arose solely from the judicial review procedures of the APA. As with the objectors to Lease No. M500031, SGNA had the opportunity to present its concerns to the Land Board – which it did. Unlike the objectors to Lease No. M500031, SGNA did not convince the Land Board to take the action requested by SGNA. At that point, SGNA had twenty-eight days to challenge the Board's action by means of a petition for judicial review, and failed to do so. The APA, for better or worse, gives aggrieved parties one bite at the apple. SGNA failed to take advantage of the opportunity for judicial review and cannot be allowed to keep gnawing away until it gets the result it wants.

III. CONCLUSION

The record before the Hearing Officer contains ample support to grant Respondent's Motion for Summary Judgment and dismiss SGNA's Petition as a matter of law.

DATED this 15th day of July, 2019.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ANGELA SCHAEER KAUFMANN
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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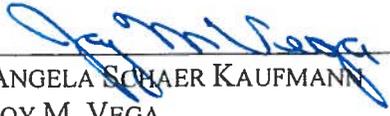
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