



# IDAHO'S ENDOWMENT LANDS LEGAL PRINCIPLES

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JANUARY 28, 2021

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“Public Lands”

v.

“Endowment Lands”


WHAT'S THE DIFFERENCE????

# "PUBLIC LANDS"

- ▶ Often federally-owned (approx. 63% of Idaho comprised of federal lands)
- ▶ Multiple purpose missions:
  - Forest Service:
    - ✓ "To sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."
    - ✓ "We balance the short and long-term needs of people and nature"
    - ✓ Organic Act, Multiple Use Sustained Yield Act (MUSYA)
  - Bureau of Land Management:
    - ✓ "To sustain the health, diversity and productivity of public lands for the use and enjoyment of present and future generations."
    - ✓ "A multiple-use and sustained yield mission"
    - ✓ Federal Land Policy and Management Act (FLPMA)


# Endowment Lands

- ▶ Lands granted by the federal government at or near statehood
- ▶ Granted for specific purposes as set forth in the Idaho Admission Bill
- ▶ Owned by the state, but held in trust for endowment beneficiaries:
  - *Public Schools* (K-12)
  - *Agricultural College* (University of Idaho)
  - *Charitable Institutions* (Idaho State University, State Juvenile Corrections Center, School for the Deaf and Blind, Idaho Veterans Home, and State Hospital North)
  - *Normal School Fund* (Idaho State University Department of Education and Lewis-Clark State College)
  - *Penitentiary*
  - *School of Science* (University of Idaho)
  - *State Hospital South*
  - *University* (University of Idaho)
  - *Capitol Permanent Fund*



““ The lands granted by this section shall be held, appropriated and disposed of exclusively for the purpose herein mentioned, in such manner as the legislature of the State may provide. ””

IDAHO ADMISSION BILL, § 12



“ [T]he state board of land commissioners. . . shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law. ”

IDAHO CONST., ARTICLE IX, § 7



# The Heart of the Matter: Article IX, § 8 of the Idaho Constitution

THE LAND BOARD'S DUTIES AND OBLIGATIONS TO THE BENEFICIARIES

It shall be the duty of the [Land Board] 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** . . . ; provided, that no state lands shall be sold for less than the appraised price. . . .The legislature shall, . . . provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and **held in trust**, subject to **disposal at public auction** for the **use and benefit of the respective object for which said grants of land were made**, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; . . . .



# Three Primary Obligations:

- ▶ The trust obligation: the duty to act solely in the beneficiaries' interest
- ▶ The duty to maximize long term financial returns to the endowment beneficiaries
- ▶ The public auction requirement

# The Land Board and IDL as Trustee

- ▶ “The State’s endowment lands are part of a sacred trust reserved for the benefit of Idaho’s public schools and public institutions. The Board, which manages those endowment lands, is the epitomic public trustee.” *Wasden v. State Bd. of Land Comm’rs*, 153 Idaho 190, 195, 280 P.3d 693, 698 (2012) (emphasis added).
- ▶ “Article IX, § 8 requires that the State consider only the maximum long term financial return” to the schools in the leasing of school endowment lands. . . . By attempting to promote funding for the schools and the state through the leasing of public school lands, I.C. § 58-310B violates the requirements of Article IX, § 8.” *Idaho Watersheds Proj. v. State Bd. of Land Comm’rs*, 133 Idaho 64, 67, 982 P.2d 367, 370 (1999) (emphasis added)
- ▶ “[T]he Constitution vests the control, management and disposition of state lands in the State Board of Land Commissioners. [Citation omitted]. They are, as it were, the trustees or business managers for the state in handling these lands, and on matters of policy, expediency and the business interest of the state, they are the sole and exclusive judges so long as they do not run counter to the provisions of the Constitution or statute.” *Pike v. State Bd. of Land Comm’rs*, 19 Idaho 268, 113 P. 447, 453 (1911) (emphasis added).

# The Land Board and IDL as Trustee:

## A caveat

- ▶ “This court has frequently held that the [Land Board] is vested, under the provisions of article 9, §§ 7 and 8, of the Constitution, with the direction, control, and disposition of the public lands of the state, under such regulations as may be prescribed by law. Such direction, control and disposition **must be in accordance with the Constitution and statutes of the state, and not otherwise.**” *East Side Blaine County Livestock Ass’n. v. State Bd. of Land Comm’rs*, 34 Idaho 807, 198 P. 760 (1921) (emphasis added).
- ▶ If the Land Board’s action “involves the exercise of a judgment or discretion vested in them by law,” the court will not control, direct or interfere with that action. However, if the action “is without authority of law or has no legal sanction or authority . . . this court may interrupt them, and declare the law on the subject, and point out to them the legal scope within which their judgment and discretion must be exercised.” *Balderston v. Brady*, 17 Idaho 567, 107 P. 493 (1910) (emphasis added).
- ▶ See also *Pike, infra* (Land Board members “are the sole and exclusive judges so long as they do not run counter to the provisions of the Constitution or statute.”)

# The duty to maximize long term financial return to the beneficiaries

- ▶ *Idaho Watersheds, infra* (Article IX, § 8 requires that the State consider only the “maximum long term financial return” to the schools in the leasing of school endowment public grazing lands.)\*
- ▶ *Wasden, infra* (“Article IX, § 8, expressly states that endowment lands must be held in trust to security the maximum long term financial return, . . . .”)
- ▶ *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 350, 79 P.3d 707, 709 (2003) (“[T]he [Land Board] has been entrusted with the duty to determine the best use or uses to be made of state land, in order to carry out the constitutional mandate . . . to secure from the endowment trust lands the maximum long-term financial return.”).

# The public auction requirement

- ▶ “The dominant purpose of [Article IX, §§ 7 and 8] and of the statutes enacted thereunder is that the state shall receive the **greatest possible amount for the lease** of school lands for the benefit of school funds, **and for this reason competitive bidding is made mandatory**. . . . The provisions of the Constitution and statutes above referred to made it the duty of the State Board of Land Commissioners, under the facts and circumstances of this case, to offer the lease of said lands at auction to the highest bidder, and the Board, in refusing to do so, failed in the performance of an act which the law enjoins as a duty resulting from its official position. In refusing to do so, its action ran counter to the provisions of the Constitution and statutes.” *East Side Blaine County Livestock Ass’n*, 198 P. at 763 (emphases, bracketed material added).

# The public auction requirement, cont.

- ▶ “The language of Article IX, § 8, unambiguously requires that any disposal of endowment land must be at public auction. “Disposal,” as this Court has indicated and as is apparent from the context of Article IX, § 8, means any lease or sale. Thus, Article IX, § 8 requires public auctions for leases of endowment lands.” *Wasden v. State Bd. of Land Comm’rs*, 153 Idaho 190, 198, 280 P.3d 693, 701 (2012) (emphases added).

# Statutes

- ▶ Title 58, Chapter 1, Idaho Code: “Department of Lands”
  - Land Board and IDL structure, powers, duties, etc.
  - IDL has the power “[t]o exercise, under the general control and supervision of the [Land Board] all the rights, powers and duties vested by law in the [Land Board], except the supervision of public investments, administration of the Carey Act, and the administration of [a repealed Idaho Code provision].” I.C. § 58-119.
- ▶ Title 58, Chapter 3: “Appraisalment, Lease & Sale of Lands”
- ▶ Title 58, Chapter 4: “Sale of Timber on State Lands”
- ▶ Title 58, Chapter 11: “Real Property Acquisition”
- ▶ Title 47, Chapter 7: “Mineral Rights in State Lands”
- ▶ Title 47, Chapter 8: “Oil & Gas Leases on State & School Lands”

# Administrative Rules

- ▶ IDAPA 20.02.14, "Rules for Selling Forest Products on State-Owned Endowment Lands"
- ▶ IDAPA 20.03.08, "Easements on State-Owned Lands"
- ▶ IDAPA 20.03.13, "Administration of Cottage Site Leases on State Land"
- ▶ IDAPA 20.03.14, "Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Lease"
- ▶ IDAPA 20.03.15, "Rules Governing Geothermal Leasing on Idaho State Lands"
- ▶ IDAPA 20.03.16, "Rules Governing Oil & Gas Leasing on Idaho State Lands"





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JIM ELBIN