Idaho Forest, Wildlife and Range Policy Analysis Group

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Idaho's Endowment Lands: A Matter of Sacred Trust

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The Idaho Forest, Wildlife and Range Policy Analysis Group was established by the Idaho Legislature in 1989 to provide objective analysis of the impacts of natural resource proposals.

The Policy Analysis Group is administered through the University of Idaho College of Forestry, Wildlife and Range Sciences, John C. Hendee, Dean.

Foreword

The Idaho Forest, Wildlife and Range Policy Analysis Group (PAG) was created by the Idaho legislature in 1989 to provide Idaho decision makers with timely and objective data and analyses of pertinent natural resource issues. A standing nine-member advisory committee suggests issues for the PAG to address, and the priority of the issues. Committee members are identified on the inside cover of this report. Results of each analysis are reviewed by a technical advisory committee selected separately for each inquiry (see the page immediately following this report). After technical review, results are made available in a policy analysis publication series.

This particular report is the first to be published by the PAG. The advisory committee recommended this topic for analysis because of recent debate and discussion focusing on Idaho's state lands. Many individuals and groups either disagree with or do not understand the guiding principle of law that Idaho's state lands must be managed "... in such manner as will secure the maximum long term financial return to the institution to which granted ..." The market-based lease fees resulting from this policy have, in some cases, increased steeply and may limit opportunities to attain other worthwhile public benefits. Examples of recent endowment land issues include the lease of state land to a Girl Scout camp on Payette Lake, the University of Idaho's forestry field camp, also on Payette Lake, and individual recreation site leases on Priest Lake as well as Payette Lake.

The "maximum long term financial return" language comes from a 1982 amendment to the *Idaho Constitution* designed to clarify and replace earlier vague language defining the disposition of state lands that read, "... in such manner as will secure the maximum possible amount therefor ..."

When the advisory committee suggested this issue for the group's attention in December, 1989, legislation to initiate a referendum calling for a constitutional amendment to modify the "maximum long term financial return" language was anticipated. Many people feel that new language to allow the attainment of the greatest amount of public benefits as an objective for state lands would better serve the people of the state.

The intent of this report is to help clarify the underlying purpose that serves as the basic guideline for the management and administration of Idaho's state lands. Our hope is that the information will be useful to policy makers, administrators, and citizens who are concerned about managing these lands in the best interests of the people of Idaho.

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In spite of the considerable amount of help offered by all of the above individuals, any errors in this report are those of the author.

Summary

A distinction must be made between the management objectives established by law for federal public lands in Idaho and the objectives for Idaho's state lands. State lands were acquired from the federal government under a trust agreement whereby proceeds from the disposal or use of the lands would exclusively benefit certain designated public institutions, primarily public schools. This trust arrangement is clearly defined in law and has stood many legal challenges. However, certain individuals and groups tend to either confuse or ignore the fundamental difference in the management objectives of these two categories of public lands. They contend that Idaho's state lands should be managed for a variety of purposes to benefit a variety of groups and individuals, much as federal land is managed.

The review of pertinent law in this report indicates that the notion of managing the grant lands for a wide variety of purposes and public benefits seems to violate both federal and state law. These lands were granted to the state for the purpose of establishing a perpetual endowment for specific beneficiaries, mainly the public schools. As a matter of trust, the state is obligated to sell, lease, exchange, or manage the grant lands, producing full value (now defined as "maximum long term financial return") from them only to benefit the specific institutions designated by law as trust beneficiaries.

Introduction

In 1969 Gordon C. Trombley, Commissioner of the Idaho Department of Public Lands, described a still-troubling land management policy problem:

> Evidence strongly suggests a lack of public knowledge and understanding of the term "state lands." These lands are, at times, referred to as, "public lands," "grant lands," "school lands," "endowment lands," etc. Irregardless of the term used to describe them, there appears to be a general wide-spread misconception as to how they were acquired, their purpose and dedication, and their disposition.[1]
>
> It is sincerely hoped that this publication will help dispel some of the misconceptions that surround the administration of these grants, and further, that it will be of some significant use to the citizens at large, the law makers, and administrators.[2]

This report is intended to serve the same purpose as Trombley's long out-of-print report[3] on Idaho's land grants: to provide a clear understanding of the fundamental purpose of Idaho's state lands. As used in this report, the term "public lands" when referring to state lands (or grant lands or endowment lands) means those lands received from the federal government at the time of statehood, other than the beds and banks of navigable waters.

The basic problem stems from perceptions of either what "public land" is or what it ought to be. The misconception is that state lands are managed under the same concept as federal lands. Perhaps in recognition of this confusion, in 1974 the agency responsible for the management and administration of Idaho's state lands dropped the adjective "public" from its name, and became the Idaho Department of Lands. In spite of the name change, the agency is still responsible for managing "public lands" belonging to the state of Idaho.

Determining who gets the benefits from public lands (however defined) is a significant issue in Idaho, where almost two-thirds of the state (65%) is federal land, and 4.5% of the land is owned and managed by the state. If all the parcels of Idaho's grant lands (now totalling 2.4 million acres) were aggregated together, the area they cover would be slightly smaller than the state of Connecticut, or slightly larger than Delaware and Rhode Island combined. Determining who gets what from the almost 70 percent of Idaho's lands in public ownership is a matter of policy. Federal policy concerning land management objectives is quite general; state policy is quite specific.

Federal lands are managed under a variety of policies that promote the attainment of maximum benefits for the public.[4] These policies -- specifically the National Environmental Policy Act of 1969,[5] National Forest Management Act of 1976,[6] and Federal Land Policy and Management Act of 1976[7] -- all mandate comprehensive planning processes that include impact analysis and extensive public review.[8] Although the attainment of maximum benefits is a feature of federal policy, those benefits are not to be measured solely in financial terms. For example, the National Forest Management Act of 1976 requires "... analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960, ..."[9] The Multiple-Use Sustained-Yield Act[10] states: "'Multiple use' means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; ... with consideration being given to the relative values of the various resources, and <u>not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output</u>."[11] [Emphasis added.]

In sharp contrast, Idaho's state lands are to be managed "... in such manner as will secure the maximum long term financial return to the institution to which granted ..."[12] The fundamental difference between the management objectives and policies for state and federal lands in Idaho stems from the historic purpose of federal land grants to the states for educational purposes.

Purpose of the land grants

At one time or another the federal government has held title to 82.5% of the land in the United States.[13] Today 32% of the land still remains in federal ownership; title to the remaining 50% of America's land, once held by the federal government, has been transferred to private entities and state institutions for a variety of purposes. In some way, those grants of land were provided as incentives to encourage or support the settlement of the American frontier.

In total, the largest divestiture of federal land was made when states were admitted to the Union. The grants to the states were part of a political compromise under which newly admitted states agreed not to contest or tax the federal land holdings within their borders in exchange for school and other grant lands.[14] Grants to the states totalled 328 million acres,[15] almost 15% of America's land. One type of grant to the states (totalling 77.6 million acres,[16] almost 3.5% of America's land) was for the specific purpose of supporting public education in the "common schools."

In an attempt to promote equity and harmony among the new states and the old, each state was given 1/36 of the land in the territory as school lands -- specifically section 16 in each thirty-six square mile township. With the admission of California in 1850, grants of 1/18 of the land (sections 16 and 36) were made to the new western states in appreciation of their vastness. Idaho was granted these two sections per township at statehood in 1890 for its common schools. Later, Utah (1896) and New Mexico and Arizona (1912) received four sections per township[17] because of the arid, and presumably less valuable, land in those territories.[18]

The concept of federal land grants to the states for the purpose of maintaining public schools may be traced back to Thomas Jefferson's strong belief that an educated populace is the foundation of democracy.[19] These ideals were put into operation with the Northwest Ordinances of 1784, designed to admit territories as states on equal footing with the original thirteen colonies. The Land Ordinance of 1785 provided for rectangular surveying of the public lands into townships to aid in dividing the land.[20] According to Handy's 1989 comment,[21] Theodore Roosevelt described the school land grants as having been "the basis for the whole system of public education" in the western states.[22]

Today the states must continue to abide by the original purpose of the grant lands -- to benefit the common or public schools within the state and the other specifically designated beneficiaries of the land grants. The land was given only for specific purposes defined in federal statutory laws and state constitutions and now firmly supported by case law, as summarized in the concluding section of this report.

Idaho's grant lands

When Idaho achieved statehood in 1890, almost 3 million acres of land were granted to the state by the federal government expressly for the purpose of benefitting the public schools.[23] Another 672,000 acres were given to Idaho for the benefit of eight other public institutions, including the University of Idaho,[24] the Agricultural College, the normal schools (now Lewis-Clark State College and Idaho State University), and the state penitentiary.[25]

In 1889, the framers of the *Idaho Constitution* faced a dilemma. Statehood required a formal constitution that, among other things, had to address the disposition of the federal land grant. How should Idaho go about using the land endowment given to the state to support its public schools and other institutions? Lively discussion at the Constitutional Convention focused on this matter.[26]

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Some argued that the state should sell the land, invest the principal and use the interest to support the schools and institutions:

> Now if this land could be sold at what would be a fair price, if it could be converted into money, we would get something from it, and further than that, it would pass into the hands of those who would have to pay taxes, for which we get no taxation now.[27]

Others argued that the state should hold the land forever, and obtain benefits by leasing the agricultural, grazing and mineral lands, and by selling timber from time to time. Debate also focused on the difficulty of determining the value of the grant lands:

> [T]hese school lands should remain to perpetuate the school fund, preserving a nucleus around which we may collect something for not only ourselves who live now, but for those who shall come after us.[28]

> [T]his territory seems so wide, and there is so much vacant and unoccupied land lying all around us, that we despise the possessions which Uncle Sam in his liberality has given us to hold in trust for our children. I say that neither I nor you have any definite idea of what this land is worth today which lies under the sun of Idaho or what it is going to be worth in the future.[29]

The dilemma faced by the framers of the *Idaho Constitution* was resolved through compromise -- up to a specified amount of land could be sold annually at a price exceeding an established minimum, the rest would be retained and managed by the state, with leases and sales of severable assets such as minerals and timber allowed.[30] A provision for the exchange of land was ultimately included, but not until almost a century later.[31]

The "sacred trust"

During the deliberations at the Constitutional Convention, the term "sacred" was used to refer to the school trust fund:

> [N]o fund is more sacred than the school fund, and perhaps there is no other fund so sacred; it should be guarded in every manner possible, and by having this provision in here, the children will always be made sure there will be that much money to their credit, and we will have that much at stake in our schools. But if there is no provision for making this fund good in every way, it may be squandered, and the first thing we know our school fund will be so small that we can only maintain the schools by local taxation. I think the legislature can provide for making good any losses which may occur. They will probably be more careful in making investments if it is known that the state has to make good.[32]

"Sacred trust" has become a convenient phrase[33] used to describe the obligations on the part of the state that stem from the *Idaho Admission Bill*,[34] and the *Idaho Constitution*,[35] even though the term is not used in either law. "Sacred trust" continues to be used to describe the obligation on the part of the state of Idaho with

respect to school grant lands and the proceeds from school lands that are held in the "sacred trust fund." [36] Indeed, "the Fund is a trust of the most sacred and highest order." [37] Furthermore,

> [a]dministration of endowment lands and monies derived from them has been termed a sacred trust by the high courts.... Endowment lands have truly become a sacred trust to be managed and perpetuated for the benefit of Idaho's youth and institutions.[38]

Although the term "sacred trust" may be unique to Idaho, the underlying concept is not. Two federal cases concerning the disposition of school land grants help to define the "sacred trust" obligation. First, in *Andrus v. Utah*,[39] the United States Supreme Court in 1980 held that Utah could sell trust lands for the benefit of the schools. According to one interpretation of this case, the Court characterized the school land grants as a "solemn agreement" between the U.S. Congress and the state.[40] According to another interpretation, "The school land grant and its acceptance by the state constitutes a solemn compact between the United States and the state for the benefit of the state's public school system." [41] Second, in a 1968 case in eastern Washington,[42] the federal district court stated:

> There have been intimations that school land trusts are merely honorary, that there is a "sacred obligation imposed on (the state's) public faith," but no legal obligation. These intimations have been dispelled by [the U.S. Supreme Court in] Lassen v. Arizona.... This trust is real, not illusory.[43]

Regardless of the phrase used to describe it, the trust agreement -- as statutorily defined in state admission acts and constitutions and reaffirmed by subsequent case law decisions -- obliges the state to limit its actions concerning the endowment trust lands and to treat the proceeds from those grant lands with extraordinary care.

Managing the grant lands

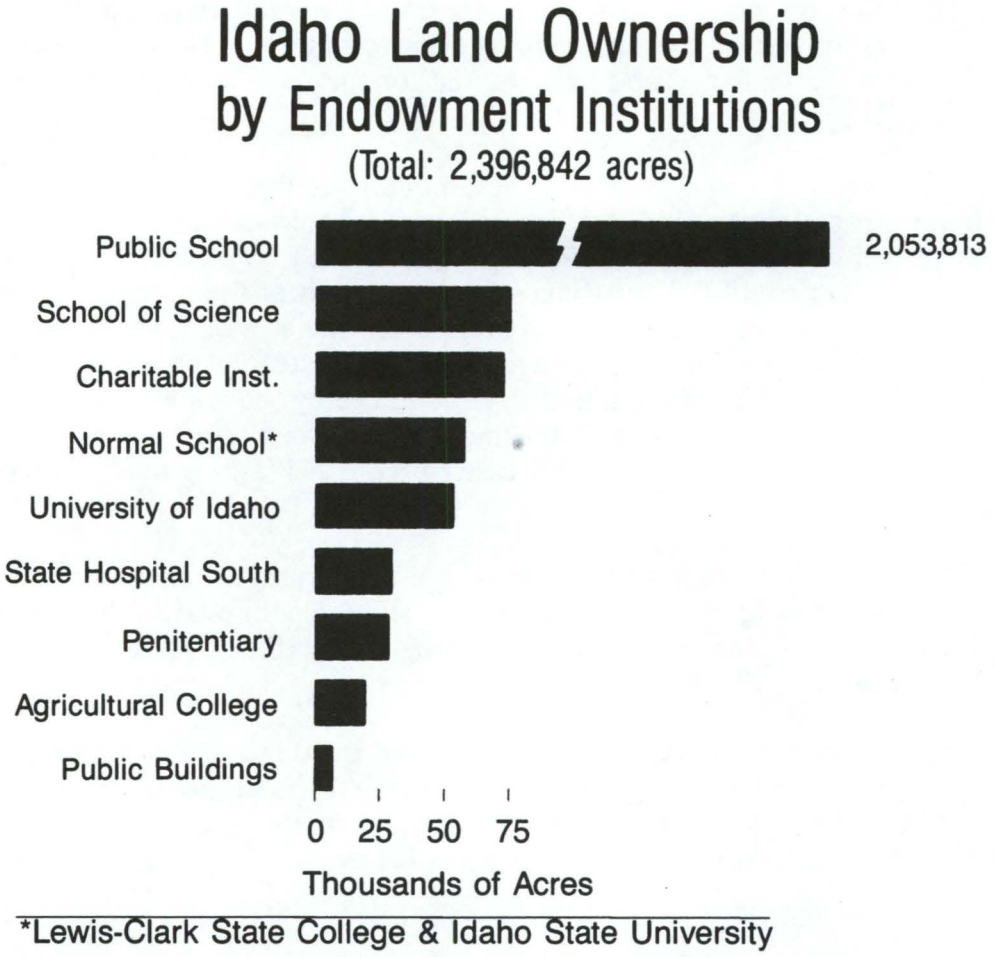
After a century of land sales and exchanges,[44] Idaho's original endowment of 3.6 million acres of land now amounts to 2.4 million acres. At 2 million acres, public school lands represent 83% of that total. Figure 1 portrays the relative shares of the remaining 17% of the endowment lands beneath the broken bar representing the lion's share belonging to the public schools.

The two key agencies responsible for managing the endowment lands are the State Board of Land Commissioners and the Idaho Department of Lands.

State Board of Land Commissioners.

The State Board of Land Commissioners is mandated with the responsibility of overseeing the grant lands. The board serves as the trustee for the land endowment and consists of five individuals: the Governor, Secretary of State, Attorney General, State Auditor, and Superintendent of Public Instruction.[45] The director of the Idaho Department of Lands is secretary to the board. When managing and administering its

-- Figure 1 --



Source: *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, p. 21.

trust lands, the state, as represented by the board, must as a matter of basic trust law comply with the same fiduciary obligations as apply to private trustees. The board is therefore constrained to look strictly at the interest of the endowment beneficiaries rather than the general public interest.[46]

In keeping with its mandate,[47] the management concept that guides the board is to generate the maximum long term financial return for the nine beneficiaries of the trusts (see Figure 1) for whom the board acts as trustee. This stance can be unpopular with segments of the Idaho populace. Some people feel that state lands should be managed for the benefit of the general public by providing for public uses, such as recreation; or for beneficiaries other than those historically designated by law, such as grazing

permittees or recreation site lessees; or at something less than maximum financial return, in order to serve other public purposes, such as educational experiences.

Idaho courts have affirmed two key points concerning the board. First, the board is a trustee or business manager acting on behalf of the state. In *Pike v. State Board of Land Commissioners*,[48] the court in 1914 said:

> In the first place, the constitution vests the control, management and disposition of state lands in the state board of land commissioners. (Sec. 8, art. 9). 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.[49]

Second, the board may exert certain discretionary authority in carrying out its trust obligations. In *Barber Lumber Co. v. Gifford*,[50] a case heard by the Idaho Supreme Court in 1914, the State Board of Land Commissioners accepted a bid of $100,000 from the plaintiff for the sale of timber from endowment lands when another bidder, Mr. Snow, had offered $101,000. The court determined that in a sale of timber the state is "financially interested in making the sale of such timber as advantageous to the state as possible." [51] Although Barber Lumber Co. was not the high bidder, the board felt that the state would gain more of an advantage because Barber Lumber Co. intended to build roads and a railway to access the timber, and Mr. Snow did not. The court ruled that the board had properly exercised its authority by rejecting Mr. Snow's higher bid in this case, "in consideration of other vast benefits that would occur to the state <u>and its endowment funds</u> which, in the opinion of the board, would be far in excess of the value of $1,000 offered by Mr. Snow over the Barber Lumber Co." [52] [Emphasis added.] Furthermore, the court affirmed that "the land business of the state placed in the hands of the state board of land commissioners ought to be conducted on business principles so as to subserve the best interests of the people of the state..." [53] and "it is clear that the state board has acted in this matter only as a man of good business sense and judgement would act in regard to his own affairs." [54]

Idaho Department of Lands.

The Idaho Department of Lands (IDL) carries out the constitutional functions of the Board of Land Commissioners,[55] and many other activities, with a permanent staff of 200.[56] Those activities are separated into two divisions: (1) lands, minerals and range management, which oversees grazing, agriculture, mining, oil exploration, habitation, and recreation uses of the endowment lands; and (2) forestry and fire, comprised of three bureaus: forest management, fire management, and private forestry.[57]

IDL's endowment land management program budget for 1988 was $6,416,060; [58] the non-endowment land management program budget was $9,613,923.[59] As shown in Table 1, almost one-fourth of the endowment land management budget was provided by revenues produced from the endowment lands;[60] almost 65 percent of the budget came from general fund appropriations (Table 1). Almost half of the operating budget for endowment lands is used for timber management and forest improvement (Table 1). Idaho's endowment trust includes 865,000 acres of timberland that is managed "in a manner that will improve timber productivity and multiple use capacity of the lands, thereby assuring maximum long-term financial returns to the endowment funds." [61]

Table 1. Sources and uses of funds for endowment land management, 1988.

Sources of funds		
General fund appropriation	$4,135,930	64.5%
Permanent endowment trust funds	1,208,310	18.8
Income trust funds	350,881	5.5
Self-supporting programs [a]	720,939	11.2
Total	$6,416,060	100.0%
Uses of funds		
Timber management & forest improvement	$3,085,962	48.1%
Fire protection	709,908	11.1
Support services	644,743	10.0
Range management & improvement	638,221	9.9
Land & minerals management	388,056	6.1
Recreation management & improvement	228,231	3.6
Self-supporting programs [a]	720,939	11.2
Total	$6,416,060	100.0%

[a] Timber scaling fees, road maintenance, and Pilgrim Cove water system.

Source: *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, p. 30-31.

To some extent, the endowment lands still display a characteristic checkerboard pattern, particularly in southwestern Idaho,[62] but efforts to consolidate tracts through exchange have successfully resulted in large blocks of land that facilitate better management, and therefore more returns to the trust beneficiaries. The eastern side of Priest Lake in the northern Idaho panhandle is one such area; western Clearwater County in north central Idaho is another. Efforts to further block up land tracts continue.

Disposition of benefits

Originally intended to benefit the public schools and other institutions, the endowment lands now provide five to ten percent of the costs of maintaining public schools in Idaho. While the percentage of state needs provided may be small, the dollar amounts are substantial. The endowment produced almost $27.5 million[63] in 1988. As is the situation in Washington and many other western states, the body of the endowment trust takes two forms: a permanent fund, representing primarily the proceeds from lands that were sold, and the remaining land itself, whereupon land management decisions are made.[64] Benefits accruing to the state of Idaho from the endowment lands are handled in two separate funds: the permanent endowment fund and the income fund.[65]

The permanent endowment fund amounted to $289 million in 1988, 68 percent of which is held for the public schools.[66] These funds may never be diminished, and "shall forever remain inviolate and intact." [67] The State Treasurer is the custodian of the

fund.[68] Revenues from the sale of land and certain revenues from the management of the endowment lands are deposited into the permanent endowment. Recent increases come primarily from timber sales, and have been in the neighborhood of $12-15 million per year. The four sources of 1988 revenues amounting to $14.9 million in 1988 are detailed in Table 2. Less than ten percent of these revenues were used in IDL's operating budget (Table 2).

Table 2. Sources of land management revenue for the permanent endowment fund, 1988.

Timber sales	$12,237,092
Land sales	2,276,720
Mineral royalties	217,569
Right-of-way easements	195,773
Subtotal	$14,927,154
Idaho Dept. of Lands operating budget	1,208,310
Total	$13,718,844

Source: *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, p. 30.

The income fund is the mechanism whereby the legislature appropriates monies for the beneficiaries of the endowment trust, mentioned above as amounting to roughly $27.5 million in 1988. Earnings from the permanent endowment fund managed by the State Treasurer came to approximately $23.2 million in 1988, and were supplemented by $4.3 million from IDL's management of endowment lands, as detailed in Table 3. Again, less than ten percent of these revenues were used in IDL's operating budget (Table 3).

Table 3. Sources of revenue disbursed through the income fund, 1988.

Interest income		
Land sales & miscellaneous	$1,415,029	
Timber sales	711,054	
Improvement funds	108,033	
Subtotal		$2,234,116
Rental income		
Grazing	$918,017	
Cottage sites & miscellaneous	796,687	
Minerals	261,438	
Cropland	89,745	
Subtotal		$2,065,887
Earnings from permanent endowment (est.)		23,179,997
Subtotal (est.)		$27,480,000
Idaho Dept. of Lands operating budget		350,881
Total (est.)		$27,129,119

Source: *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, p. 2, 30.

Fundamental issues

The principal questions associated with the endowment trust lands are: Who gets to use the land? How much do they pay for that use? Who gets the proceeds? Who decides the answers to these questions?

Who decides land use questions?

Questions concerning the use of the endowment lands are decided by the State Board of Land Commissioners, acting as trustees for the designated beneficiaries (see Figure 1). The board has a clearly defined responsibility to secure as much revenue as possible for the specific beneficiaries over a long term. The decisions made by the State Board of Land Commissioners are administered by the Idaho Department of Lands.

Who gets the proceeds?

The proceeds from the sale, management, and leasing of the endowment trust lands are intended to benefit not the general public, but the specific beneficiaries of the original land grants (see Figure 1). The concept of specific beneficiaries, rather than the general public, is fundamental to determining permissible uses of the endowment lands and the amount and disposition of proceeds from that use. Case law strongly reinforces the "sacred trust" obligation to specific beneficiaries and indicates that anything less than maximum financial return is unacceptable.

How much do they pay?

An answer to this complex question is elusive, and requires some understanding of the legal issues involved. In a search for persuasive authority to guide the management direction of school trust lands in Utah, Bassett in 1989 stated the principal issue as "whether maximum economic return from the [endowment trust] lands is the only allowable management scheme ..." [69] That seems to be the principal issue in Idaho as well. Bassett concludes that the law forcefully argues against any other approach, and that California's multiple-use approach, Arizona's attempts to take into account non-economic values, and Wyoming's stance that school trust lands should benefit the public generally are all potentially at odds with Congressional intent as expressed in statutory law.[70]

Case law

Case law decisions reinforce the basic idea that endowment lands are a "sacred trust" or "solemn compact." [71] Courts have determined that anything precluding the beneficiaries from receiving the full value of benefits from the endowment lands violates both the original trust under which the federal government granted the lands and the agreement whereby the states were given title to the grant lands upon admission to the Union.

United States Supreme Court.

Two cases that defined endowment trust land obligations follow. In *Ervien v. United States*,[72] the Court held, in 1919, that New Mexico could not spend three percent of its endowment land trust income to advertise the resources and advantages of the state. Such action might be "a wise administration of the property," [73] but because schools would not benefit directly, such action was considered a breach of trust of the state's enabling act whereby the school lands were granted.[74] In *Lassen v. Arizona ex rel. Arizona Highway Dept.*,[75] the Court, in 1967, held that Arizona must directly compensate the trust fund for the "full benefit" of school land the state obtained from trust resources for a highway right-of-way.[76] Even though an activity may ultimately benefit the trust, the trust must nevertheless be fully compensated.[77]

These two Supreme Court rulings -- that benefits must accrue only to designated beneficiaries,[78] and that such benefits must be at full fair market value[79] -- have been interpreted with the following comments:

> Given the language and attitude found in the relevant case law, including rulings of the United States Supreme Court, any derived benefit from the school trust lands must be used in support of schools and may not be used to support or subsidize other public purposes. Any arrangement not ensuring full fair market value for the use and/or sale of the school trust lands violates the trust obligation mandated by Congress.[80] [Emphasis added.]
>
> It is clear from the Supreme Court rulings concerning trust lands, that school trust resources are to be closely tied to the best method, economic or otherwise, of supporting public schools. No other public purpose constitutes a valid expenditure of trust resources.[81] [Emphasis added.]
>
> The United States Supreme Court has held that the interests of the school trust beneficiaries are exclusive -- they are not to be balanced against other interests.[82] [Emphasis added.]

Another interpretation is quite similar and more succinct:

> Neither the Congress nor the states may devalue the monetary trust assets to benefit others. Similarly, the trust lands and their management proceeds may not be devalued to serve other public purposes, ...[83] [Emphasis added.]

State supreme courts.

The "sacred trust" concept has been reinforced by many state supreme court decisions, as the following eight case summaries indicate. In *State ex rel. Ebke v. Board of Educational Lands & Funds*,[84] the Nebraska Supreme Court in 1951 held that the state, as trustee of the endowment lands, has a duty to seek the most advantageous terms possible in managing the lands.[85] In *County of Skamania v. State*,[86] the Supreme Court of the State of Washington in 1984 struck down a law designed to provide economic relief to purchasers of timber from endowment lands by allowing them to default on

contractual obligation or to modify or extend their contracts without penalty. The court determined that because the proposed law did not require fair market value of the contract be returned to the state, under the state's trust obligation the state's fiduciary obligation was breached.[87] The state's fiduciary duty of undivided loyalty prevents it from using state trust lands to accomplish public purposes other than those which benefit the trust beneficiaries.[88]

In *State v. University of Alaska*,[89] the Alaska Supreme Court in 1981 ruled that the endowment lands belonging to the university could not be added to a state park without compensating the trust fund at the fair market value of the land, or an equal value of exchanged land for the trust lands taken.[90] In *Kanaly v. State*,[91] the South Dakota Supreme Court found in 1985 that a state statute converting a unit of the state university into a prison was unconstitutional, because the trust compact required fair market value of the land be paid to the beneficiaries.[92] The court stated that the trust's beneficiaries "do not include the general public, other than government institutions, nor the general welfare of this state." [93]

In *Kerrigan v. Miller*,[94] an interpretation of a state statute by the Wyoming Supreme Court in 1938 stated: "The board shall lease all state lands in such manner and to such parties as shall insure to the greatest benefit and secure the greatest revenue to the state." [95] The court concluded that the terms "greatest benefit" and "greatest revenue" as used by the state legislature were not equivalent, the former probably referring to the general benefit of the citizens of the state.[96] Subsequent rulings in Wyoming took the stance that trust obligations and management were for the general benefit of the entire state.[97] Bassett's comment in 1989 is that "the Wyoming scheme raises serious doubts as to whether this approach to management of school trust lands comports with the holdings of the United States Supreme Court and other courts that have looked at the issue." [98]

Two recent decisions by the Arizona Supreme Court are also relevant. In *Deer Valley Unified School District v. Superior Court*,[99] the Supreme Court held that the state constitution prevented action by a particular school district attempting to acquire a parcel of school trust land through condemnation, because that would not allow for any additional profit that the trust might gain from competitive bidding at advertised public auction. In *Kadish v. Arizona State Land Department*,[100] the Supreme Court held that flat rate (or fixed royalty) leases for minerals extracted from school trust fund lands were unconstitutional, in that such leases provide less than the true value to the trust beneficiaries.

Two common threads weave their way through these cases and are highlighted in *Oklahoma Education Association, Inc. v. Nigh*.[101] The Oklahoma Supreme Court in 1982 reaffirmed the two key points concerning endowment lands: (1) school trust lands must be managed for the exclusive benefit of the public schools, and (2) school trust lands must be managed to obtain full value.[102] This case, perhaps more than any other, crystallizes the endowment land concept. Furthermore, it explicitly defines the manner in which rents, leases and loans from the Oklahoma trust fund are to be administered. The court determined that low-rental leases of trust lands and low-interest mortgage loans of trust funds represented unconstitutional subsidies to farming and ranching. The implications of this decision for other Oklahoma permittees and lessees should be evident.

[20] *Id.*

[21] N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington Department of Natural Resources, Olympia, WA (1989), at 4.

[22] *Id.* citing T. R. Roosevelt, *The Winning of the West (1889).*

[23] *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, Boise, ID (1989), at 21.

[24] University lands were granted to the territory of Idaho in 1881 and were subsequently vested at statehood in 1890. *Idaho Admission Bill*, 26 Stat.L. 215, ch. 656, § 8.

[25] *Id.* Authority stems from *Idaho Admission Bill*, §§ 4 (common schools), 6 (public buildings), 8 (university), 9 (penitentiary), 10 (agricultural college), and 11 (other specified institutions).

[26] *Idaho Constitutional Convention Proceedings* (1889), discussion of art. 9, § 8, "Location and disposition of public lands," Vol. I, at 637-670, 703-712, 729-765.

[27] *Id.* at 732 (Mr. Gray).

[28] *Id.* at 709 (Mr. Vineyard).

[29] *Id.* at 706 (Mr. Parker).

[30] *Idaho Const.*, art. 9, § 8, "Location and disposition of public lands;" *Idaho Admission Bill,* 26 Stat.L. 215, ch. 656, § 5, "Sale or lease of school lands."

[31] To provide legal authority for land exchanges, § 5(b) was added to the *Idaho Admission Bill* in 1974, and *Idaho Const.*, art. 9, § 8 was amended in 1982.

[32] *Idaho Constitutional Convention Proceedings* (1889), Vol. I, at 647 (Mr. McConnell). Quoted in *Moon v. Investment Board*, 96 Idaho 140 (1974), at 143.

[33] See *State v. Peterson*, 61 Idaho 50, 53, 57, 97 P.2d 603 (1939).

[34] *Idaho Admission Bill*, 26 Stat.L. 215, ch. 656, §§ 4, 6, 8, 9, 10 and 11.

[35] *Idaho Const.*, art. 9, "Education and school lands."

[36] *United States v. Fenton*, 27 F.Supp. 816 (D.Idaho 1939).

[37] *State ex rel. Moon v. State Bd. of Examiners* 104 Idaho 640 (1983), at 642.

[38] Idaho Departments of Public Lands and Education, *Endowment Lands of Idaho*, Boise, ID (*ca.* 1969), unpaged.

[39] *Andrus v. Utah,* 446 U.S. 500 (1980), *reh'g denied*, 448 U.S. 907 (1981).

Notes

1 Idaho Department of Public Lands, *Idaho Land Grants: Acquisition, Dedication, Disposition*, Boise, ID (1969), letter to Governor Don Samuelson, at Preface.

2 *Id.*

3 *Id.*

4 The "ownership" of public lands by all U.S. taxpayers may be more a consoling myth than reality, as various interest groups have claimed specific benefits from federal lands. R.H. Nelson, "The Public Lands," *Current Issues in Natural Resource Policy,* P.R. Portney, ed., Johns Hopkins Press for Resources for the Future, Baltimore, MD (1982), discussion at 56.

5 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

6 90 Stat. 2949 as amended, 16 U.S.C. 1600 *et seq.*

7 90 Stat. 2743 as amended, 43 U.S.C. 1701 *et seq.*

8 S.K. Fairfax and C.E. Yale, *Federal Lands,* Island Press, Washington, DC (1987), at 34.

9 90 Stat. 2949 as amended, 16 U.S.C. 1600, at § 2(3).

10 74 Stat. 215, 16 U.S.C. 528 *et seq.*

11 *Id.* at § 4(a).

12 *Idaho Const.*, art. 9, § 8, "Location and disposition of public lands."

13 Derived from U.S. Department of Interior, Bureau of Land Management, *Public Land Statistics* (1982, 1983) in S.K. Fairfax and C.E. Yale, *Federal Lands*, Island Press, Washington, DC (1987), in appendix tables.

14 P. Gates, *History of Public Land Law Development*, Public Land Law Review Commission, Washington, DC (1968), at 317; S.K. Fairfax and C.E. Yale, *Federal Lands*, Island Press, Washington, DC (1987), at 16.

15 Derived from U.S. Department of Interior, Bureau of Land Management, *Public Land Statistics* (1982, 1983) in S.K. Fairfax and C.E. Yale, *Federal Lands*, Island Press, Washington, DC (1987), in appendix tables.

16 *Id.*

17 *Id.*

18 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 197.

19 *Id.* at 196.

[20] *Id.*

[21] N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington Department of Natural Resources, Olympia, WA (1989), at 4.

[22] *Id.* citing T. R. Roosevelt, *The Winning of the West (1889).*

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[34] *Idaho Admission Bill*, 26 Stat.L. 215, ch. 656, §§ 4, 6, 8, 9, 10 and 11.

[35] *Idaho Const.*, art. 9, "Education and school lands."

[36] *United States v. Fenton*, 27 F.Supp. 816 (D.Idaho 1939).

[37] *State ex rel. Moon v. State Bd. of Examiners* 104 Idaho 640 (1983), at 642.

[38] Idaho Departments of Public Lands and Education, *Endowment Lands of Idaho*, Boise, ID (*ca.* 1969), unpaged.

[39] *Andrus v. Utah,* 446 U.S. 500 (1980), *reh'g denied*, 448 U.S. 907 (1981).

[40] N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington Department of Natural Resources, Olympia, WA (1989), at 4.

[41] K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 206.

[42] *United States v. 111.2 Acres of Land in Ferry County Washington*, 293 F.Supp. 1042 (E.D.Wash. 1968), *aff'd*, 435 F.2d 561 (9th Cir. 1970), citing *Lassen v. Arizona ex rel. Arizona Highway Dept.*, 385 U.S. 458 (1967).

[43] *Id.* at 1049.

[44] *Idaho Const.*, art. 9, § 8, "Location and disposition of public lands."

[45] *Id.*, art. 9, § 7, "State Board of Land Commissioners."

[46] See *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 393, 724 P.2d 125 (1986); also *County of Skamania v. State*, 102 Wn.2d 127, 685 P.2d 576 (1984).

[47] *Idaho Const.*, art. 9, § 8, "Location and disposition of public lands."

[48] 19 Idaho 268, 113 Pac. 447 (1912).

[49] *Id.*

[50] 25 Idaho 654, 139 Pac. 557 (1914).

[51] *Id.* at 670.

[52] *Id.* at 663.

[53] *Id.* at 669.

[54] *Id.* at 668.

[55] *Idaho Const.*, art. 9, § 7, "State Board of Land Commissioners."

[56] *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, Boise, ID (1989), at Preface.

[57] *Id.*

[58] *Id.* at 31.

[59] *Id.* at 35.

[60] Authority derived from *Idaho Code* § 58-140, upheld in *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389 (1986), at 393.

[61] *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, Boise, ID (1989), at 3.

62 See map depicting *Surface Management Responsibility, State of Idaho*, United States Department of the Interior Bureau of Land Management, Boise, ID (1982).

63 *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, Boise, ID (1989), at 2.

64 N. Handy, "Legal limitations on federal or state efforts to impose log export restrictions on the federal land grant trusts," mimeo., Washington Department of Natural Resources, Olympia, WA (1989), at 5.

65 *Idaho Department of Lands Fourteenth Annual Report, 1987-88*, Boise, ID (1989), at 1, 2.

66 *Id.* at 1.

67 *Idaho Const.*, art. 9, § 3, "Public school fund to remain intact."

68 *Id.*

69 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 202.

70 *Id.* passim.

71 See discussion in this report, at "sacred trust" section.

72 *Ervien v. United States*, 251 U.S. 41 (1919).

73 *Id.* at 48.

74 *Id.* at 47.

75 *Lassen v. Arizona ex rel. Arizona Highway Dept.*, 385 U.S. 458 (1967).

76 *Id.* at 463-69.

77 *Id.* at 458.

78 *Ervien v. United States*, 251 U.S. 41 (1919).

79 *Lassen v. Arizona ex rel. Arizona Highway Dept.*, 385 U.S. 458 (1967).

80 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 202.

81 *Id.* at 211.

82 *Id.* at 205.

83 N. Handy, "Legal limitations on federal or state efforts to impose log export

restrictions on the federal land grant trusts," mimeo., Washington Department of Natural Resources, Olympia, WA (1989), at 5.

84 *Ebke v. Board of Educational Lands & Funds*, 154 Neb. 244, 47 N.W.2d. 520 (1951).

85 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 199.

86 *County of Skamania v. State,* 685 P.2d 576 (Wash. 1984).

87 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 201.

88 *County of Skamania v. State*, 685 P.2d 576 (Wash. 1984).

89 *State v. University of Alaska,* 624 P.2d 807 (Alaska 1981).

90 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 201.

91 *Kanaly v. State*, 368 N.W.2d 819 (So.Dak. 1985).

92 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 202.

93 *Kanaly v. State,* 368 N.W.2d 819 (So.Dak. 1985), at 824.

94 *Kerrigan v. Miller*, 52 Wyo. 441, 84 P.2d 724 (1938).

95 *Id.*, at 452, P.2d at 727.

96 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 204.

97 *Mayor v. Board of Land Commissioners*, 64 Wyo. 409, 192 P.2d 403 (1948); *Frolander v. Isley*, 72 Wyo. 342, 264 P.2d 790 (1953).

98 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 205.

99 *Deer Val. Unified Sch. D. v. Superior Ct.,* 760 P.2d 537 (Ariz. 1988).

100 *Kadish v. Arizona State Land Dept.*, 747 P.2d 1183 (Ariz. 1987).

101 *Oklahoma Ed. Ass'n, Inc. v. Nigh*, 642 P.2d 230 (Okla. 1982).

102 K.A. Bassett, "Utah's School Trust Lands," 9 *J. Energy Law & Policy* 195 (1989), at 198.

103 *Oklahoma Ed. Ass'n, Inc. v. Nigh*, 642 P.2d 230 (Okla. 1982).

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