AARON M. FREY
ATTORNEY GENERAL

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPSCOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

Testimony in Opposition to L.D. 294, *An Act to Include a Tribal Member in the Baxter State Park Authority*

Good morning Senator Ingwersen, Representative Pluecker, and esteemed members of the Committee on Agriculture, Conservation and Forestry. My name is Aaron Frey, and I have the privilege to serve as Maine's Attorney General. I appreciate this opportunity to present Testimony in Opposition to L.D. 294, An Act to Include a Tribal Member in the Baxter State Park Authority.

I am the Baxter State Park Authority member tasked with providing legal advice related to the administration of Baxter State Park. If enacted, L.D. 294 would likely violate the terms of the Baxter State Park trust as established by Governor Percival Baxter. Because the State of Maine has a fiduciary responsibility to honor the terms of the Baxter State Park trust, I, as the Park's legal officer, respectfully request that it not be advanced.

Baxter State Park is a 209,644-acre forested wilderness park created by former Governor Percival Baxter. 12 M.R.S. § 900; https://baxterstatepark.org.[1] Uniquely, Baxter State Park is also a charitable trust: the State as trustee must hold Baxter State Park forever "for the benefit of the people of Maine." *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 191, 194 (Me. 1978); *e.g.*, P. & S.L. 1933, ch. 3; P. & S.L. 1939, ch. 1; P. & S.L. 1945, ch. 1; P. & S.L. 1949, ch. 1; P. & S.L. 1955, ch. 3.

Baxter State Park is administered by a three-member board—the Baxter State Park Authority (the Authority). 12 M.R.S. § 901. The Authority "consists of the state's principal officers in the professions of the law, forestry, and fish and wildlife management." *Normand v. Baxter State Park Authority*, 509 A.2d 640, 647 (Me. 1986) (quoting *Fitzgerald*, 385 A.2d at 202-03); 12 M.R.S. § 901 (2022); Op. Me. Att'y Gen. 83-46 (copy attached). Those three state officers are experts in professions related to the governance of Baxter State Park. The membership of the Authority was "obviously selected by Governor Baxter himself and ratified by him by his subsequent gifts." *Fitzgerald*, 385 A.2d at 202-03.

---

[1] Governor Baxter gifted Baxter State Park to the State of Maine over a thirty-one-year period through a series of deeds of trust, that were transmitted to the incumbent Governor and accepted by the Legislature through private and special laws. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 191-92 (Me. 1978); *e.g.*, P. & S.L. ch. 1931, ch. 23; P. & S.L. ch. 1945, ch. 1; P. & S.L. ch. 1947, ch. 1; P. & S.L. ch. 1949, ch. 1; P. & S.L. ch. 1963, ch. 1.

Indeed, Governor Baxter emphatically opposed L.D. 460 (103d Legis. 1967), which would have added to the Authority the elected state representatives of Millinocket and Greenville. In his letter to the Authority dated February 16, 1967, Governor Baxter stated: "Such an action would break the Trust which I established." In 1983, the Office of the Attorney General determined that maintenance of the existing Authority membership is a trust obligation which should not be altered. Op. Me. Att'y Gen. 83-46. Thus, the Office concluded that a proposal to change the Authority make-up by substituting the Commissioner of the Department of Conservation for the Director of the Bureau of Forestry would, if implemented, appear to contradict the terms of the trust. *Id.*

L.D. 294, by changing the membership of the Authority to add a member of a federally recognized Indian nation, tribe or band, would similarly appear to violate the terms of the trust. Because the State must abide by the terms of the Baxter State Park trust as established by Governor Baxter, please vote L.D. 294 out of committee as ought not to pass.

Enclosure (Op. Me. Att'y Gen. 83-46)

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 6, 1983

Honorable G. William Diamond
Honorable Neil Rolde
Chairmen, Audit and Program Review Committee
Room 425
State House
Augusta, ME 04333

Re: Baxter State Park Authority

Dear Senator Diamond and Representative Rolde:

Commissioner Glenn H. Manuel, Chairman of the Baxter State Park Authority (the "Authority"), has requested the opinion of this office concerning the legal ramifications of a proposal by the Joint Legislative Committee of Audit and Program Review to change the membership of the Authority by substituting the Commissioner of the Department of Conservation for the Director of the Bureau of Forestry. Our conclusion is that this proposal, if implemented, would appear to contradict the terms of the trust for Baxter State Park as expressed by Governor Percival Baxter.

As you know, Baxter State Park is held in trust for the people of the State of Maine and it is therefore the legal obligation of the State of Maine, as trustee, to adhere to the terms of the trust. This obligation extends to the Legislature as well as to the administrators of the Park.

There is no single trust instrument for Baxter State Park. The Baxter State Park Trust consists of a series of gifts (30 conveyances in all) by Governor Baxter between 1931 and 1962. In accordance with Governor Baxter's desire to solemnize the grand design he envisioned and the terms of the trust pursuant to which the gifts were made, each gift was conveyed by a deed of trust which was transmitted to the incumbent Governor who

then formally submitted it to the Legislature for acceptance by Private and Special Act. In addition, Governor Baxter accompanied his gifts with formal transmittal letters which were published in the Laws of Maine. As explained in his communication to Governor Sewall and the Maine Legislature on January 12, 1942:

> In this manner a long list of precedents is being established; precedents which, as time passes, will show that eight or ten different Governors and as many Legislatures, by laws duly passed and signed by these Governors, have entered into solemn pacts that create a succession of irrevocable trusts.

Thus the trust pursuant to which Baxter State Park is held and administered was created over a thirty-one year period by Governor Baxter and is principally evidenced by the deeds of trust pursuant to which these gifts were made.

These trust instruments, by their terms, do not refer to the Baxter State Park Authority. The Authority was created in 1939 to act as trustee for the State of Maine for purposes of Baxter's Trust. P.L. 1939, ch. 6. This Act, which Baxter "undoubtedly had a major role" in planning and introducing to the Legislature, J. W. Hakola, Legacy of a Lifetime, at 139, specified that the membership of the Authority should consist of the Attorney General, the Commissioner of Inland Fisheries & Game, and the State Forest Commissioner. The Commissioner of Inland Fisheries & Wildlife, and the Director of the Bureau of Forestry have since been substituted for their predecessors. 12 M.R.S.A. § 901.

The issue raised by the proposal to alter the membership of the Authority is whether the trust obligations of the State of Maine include a requirement that the present membership of the Authority be maintained in its present form in the absence of any further reorganizations of State Government. As indicated, the trust instruments themselves are silent on the point. To resolve this issue, it is necessary in the first place to refer to general principles of trust law.

It is well established that if there are no instructions or if an ambiguity exists in the terms of a trust, the courts will look to evidence extrinsic to the trust to resolve uncertainties in how to interpret a trust. Canal National Bank v. Noyes, 348 A.2d 232, 234 (Me. 1975); Mooney v. Northeast Bank & Trust Co., 377 A.2d 120, 122 (Me. 1977); Maine National Bank v. Petrlik, 283 A.2d 660, 664 (Me. 1971); II Scott, Law of Trusts, § 164.1 at 1258 ("Where the instrument contains no express provision or where a provision is ambiguous

or uncertain in its meaning, resort may be had to extrinsic evidence to determine the terms of the trust."). Our Law Court has applied this principle to the Park Trust in Fitzgerald v. Baxter State Park Authority, 385 A.2d 189, 199 (Me. 1978):

> Given the ambiguity that plainly exists in the language of the trust deeds, due to the inherent tension among the several Park purposes, the Superior Court correctly sought help from a document extrinsic to the trust instruments.

Such extrinsic evidence is designed to elicit the intent of the settlor of the trust at the time the trust was created. Mooney v. Northeast Bank & Trust Co., supra, 377 A.2d 122; Canal National Bank v. Noyes, supra, 348 A.2d at 234; National Newark & Essex Bank v. Hart, Me., 309 A.2d 512, 518 (1973); II Scott, Law of Trusts, § 164.1 at 1260. Therefore, it is appropriate to examine such extrinsic evidence as can be found which bears on the intent of Governor Baxter with regard to the membership of the Authority.

In 1955 Governor Baxter executed a formal instrument interpreting his Trust and in that year the Legislature evidenced its concurrence by enacting the interpretative declaration into law. P. & S.L. 1955, ch. 2 (the "1955 Interpretation Act"). See Fitzgerald, supra, 385 A.2d at 198. The 1955 Interpretation Act specifically refers to the Authority as the entity to exercise control over the Park and further refers specifically to the Departments of Forestry and Fish and Game. In addition, several of Governor Baxter's formal communications refer to both the Authority and some of its specific members. See e.g., the January 11, 1955 letter to Governor Muskie, which makes reference to the 1955 Interpretation Act:

> In consultation with our Forest and Game officials and with the Attorney General's Department it seems desirable to provide for an understanding as to what is required under the Trust Deeds.

Also see Governor Baxter's March 17, 1955 letter to Governor Muskie, commenting on the creation of the Scientific Management Forest Area, in which Governor Baxter said that "It long has been my purpose to create in our forests a large area wherein the State may practice the most modern methods of forest

control, reforestation and production under the management of our able Forest Commissioner Mr. Nutting and his associates." (emphasis added).

One of the most emphatic letters on the subject of the membership of the Authority was written by Governor Baxter on February 16, 1967 to the Park Authority in reference to a proposal to enlarge the Authority to include State Representatives from Millinocket and Greenville. Governor Baxter strongly opposed this change in the membership writing:

> The present Commission of three members has worked without salary and has taken extra good care of the Park. Only those who seek to gain some advantage, which I do not understand, are behind this movement.
>
> After my donating in excess of 200,000 acres of land and money in the amount of more than one and one-half million dollars, it would seem that my wishes in this matter should be recognized. There is no need for a change because the present system is working satisfactorily and carrying out my plans. I regard this bill as a personal attack against what I have done in creating Baxter State Park.
>
> The members of the present commission are familiar with the Park and I want them to carry on without any change being made. As a matter of fact, we have no finer public officials than these three men. They are consciencious and there is no such thing as politics in their work.
>
> I do not go into details because this proposal lacks any merit and would bring into the Park system elements which would ruin harmony. I hope the time does not come when the wishes of one who has created the most unique park in the country would be disregarded.
>
> The citizens of our State, if this matter were placed before them, would not think of making any changes. Such an action would break the Trust which I established

> and I should be humiliated if I were ever called upon to go before a Legislative Committee to try to stop passage of this proposed bill. [Emphasis added].

This letter was read to the State Government Committee by Austin Wilkins, and the proposal was defeated following opposition by several present and former members of the Authority. March 3, 1967 letter of Austin Wilkins, Forest Commissioner, to Governor Baxter.

Further evidence of Governor Baxter's intent with regard to membership of the Authority is found in a letter of Albert D. Nutting, former Forest Commissioner and later head of the School of Forestry at the University of Maine, a man who was particularly close to Governor Baxter. Mr. Nutting drafted a proposal for a multiple use state forest and for the continuance of the Baxter State Park Authority, such proposals being transmitting to Governor Baxter in a letter dated December 11, 1967. In the proposal concerning the Park Authority, Nutting wrote:

> The present administrative organization of the Park is a separate unit of state government. I believe strongly that the Baxter Park Authority is the best administrative body to assure that my desires for a wilderness park will be continued. As a citizen of Maine, I greatly appreciate the accomplishments of the State Park and Recreation Commission in providing areas and facilities for out-of-door recreation for Maine people and their visitors. However, they are subject to political pressures to provide a different kind of recreation than I have long worked for in Baxter Park. My 50 years of effort to provide a wilderness park has been to establish an area where nature can take its course with a minimum of disturbance from man. I want everyone who appreciates such an area to have a chance to visit Baxter Park, but I don't want it ruined by the masses of people who go to areas just to see something new to them. State and national parks are filled with such problems. Mass recreation areas have their values, but aren't what I want. There are local people

> surrounding Baxter Park who would like to exploit it for their own benefits. They have often tried to do this. I want them to have fair treatment, but no special privileges.
>
> The present Baxter Park Authority provides the kind of governing body I believe the best fitted to continue Baxter Park as I want it to be. The three men who comprise the Authority are state employees. I don't believe their services on the Authority have, or will have, any effect on their salary costs to the state. The Forest Commissioner provides the Authority with a person informed in forest land management, the Inland Fisheries and Game Commissioner with an interested and informed person in the management of fish and game in forested areas, and the Attorney General with the person interested and knowledgeable in the law and all are interested in people. They have successfully administered Baxter Park in conformity with my ideas for many years. I want to see their type of administration continued long after I passed from the scene. [Emphasis added].

On December 28, 1967 Governor Baxter wrote to Mr. Nutting referred to his letter and commented that "You outlined what I have in mind and I appreciate the thought and time you have put in to get these ideas together."

All of this background lends strong support for the conclusion of our own Law Court in Fitzgerald, supra, 385 A.2d at 202-203:

> The membership in the Authority, obviously selected by Governor Baxter himself and ratified by him by his subsequent gifts, consists of the State's principal officers in the professions of the law, forestry, and fish and wildlife management. Both Governor Baxter and the legislature placed their confidence in the judgment and integrity of those high State officials.

It thus appears clear that Governor Baxter intended that the Forest Commissioner should be and remain as a member of the

Authority and that Governor Baxter considered such membership to be an important aspect of the trust relationship he created when the Park was created. The position of the Forest Commissioner was particularly important to Governor Baxter in view of the need of the Park for expertise in forest management and also in light of the history of Governor Baxter's reliance upon former Commissioners of the Department of Forestry, Albert Nutting and Austin Wilkins.

Of course, in 1973 (after Governor Baxter's death), the Legislature eliminated the Department of Forestry, creating a new Department of Conservation, and incorporated in the new Department the former Forestry Department, the Parks and Recreation Department, the Maine Forest Authority, the Maine Mining Bureau, and the Land Use Regulation Commission, among others. P.L. 1973, ch. 460, now 12 M.R.S.A. § 5011 (1981). The Bureau of Forestry, within the Department of Conservation, is headed by a Director who is required to be "qualified by training, experience and skill in forestry." 12 M.R.S.A. § 8003 (1981).

It is reasonable to conclude, given the foregoing discussion, that Governor Baxter's insistence that the Forest Commissioner be a member of the Authority should be tranferred to the Director of the Bureau of Forestry, as indeed the Legislature itself acknowledged during the reorganization in 1973 when it provided that the Director should remain as a member of the Authority, rather than the newly created Commissioner of the Department of Conservation. Although the Commissioner holds a position in State government superior to that of the Director of the Bureau of Forestry, there is no statutory requirement that he possess expertise in the field of forestry and, even if there were such a requirement, the Commissioner would still lack the focus on forestry relied upon by Governor Baxter because of the Commissioner's many other responsibilities for activities and bureaus within the Department other than forestry. Indeed, there is reason to believe that Governor Baxter might be particularly concerned about the substitution of the Commissioner of Conservation for the Director of the Bureau of Forestry on the Authority because the Commissioner's constituency includes the State park system, which Governor Baxter was careful to distinguish from the Baxter State Park. See 12 M.R.S.A. § 900:

> While this area bears the name park, it is not to be confused with the existing state park system and is to "be separately administered free from any connection with

> the larger State Park Commission" (Bureau of Parks and Recreation). That system, purchased with the funds of the people, must change from time to time to accommodate changing circumstances and the varying desires of its proprietors; not so, Baxter State Park, purchased by the generosity of one man, richly endowed, and presented to the people with specific stipulations. [Emphasis added].

Also see Governor Baxter's letter of May 20, 1960 to Governor Reed and the Executive Council.

Given Governors Baxter's strong views about the existing membership of the Authority, as expressed in various extrinsic documents and as recognized by our own Law Court, there are sufficient grounds to conclude that the maintenance of the existing membership constitutes a trust obligation which should not be altered.

Please let me know if I can be of further assistance to you in this matter.

Sincerely yours,

RUFUS E. BROWN
Deputy Attorney General

REB:mfe

cc: Glenn H. Manuel, Commissioner
Kenneth Stratton, Director
James E. Tierney, Attorney General
Richard Anderson, Commissioner