

Testimony of John F. Loyd
Co-Trustee of Baxter Park Wilderness Fund Trust
In opposition to LD 294
“An Act to Include a Tribal Member in the Baxter State Park Authority”

February 13, 2023

Senator Ingwersen, Representative Pluecker and distinguished members of the Joint Standing Committee on Agriculture, Conservation and Forestry, my name is John Loyd. I am one of three trustees of the Baxter Park Wilderness Fund Trust speaking today in opposition to LD 294, “An Act to Include a Tribal Member in the Baxter State Park Authority.”

This bill as drafted substantively amends Title 12 MRSA §901 by the addition of a fourth member of the Baxter State Park Authority who shall be a member of a federally recognized Indian nation, tribe or band in the State of Maine. The bill further specifies the procedures for the selection of a tribal Authority member.

The intent of the legislation appears to be a good faith effort and attempt to, in some small way, redress some of the harm and injustices Native Americans have suffered since 1492, but this effort is misplaced and an inappropriate means of redress given the unique trust nature of Baxter State Park and its creation by Percival P. Baxter (Governor Baxter).

The bill if passed will fundamentally change the nature and operations of the Baxter State Park Authority while substantively interfering with the trust established between Governor Baxter and the people of the State of Maine. This is not a question about whether a Native American should be added to the Authority, it is a question whether a fourth person, indigenous or not, should be added to the Authority to increase its members from three to four.

Governor Baxter spent 31 years, using his own money, acquiring the 28 parcels of land that eventually constituted the core of Baxter State Park. After he acquired a parcel, and with the agreement of the legislature, he conveyed (donated) the parcel to the State of Maine subject to an agreement and promises by the State to hold the land in trust under the legal concept of a “resulting trust.”

A “resulting trust” is a trust that is implied by law to give effect to the intention of the settlor (Governor Baxter). This occurs when a person transfers property to another person on the understanding that it will be held for a specific purpose, but the intended beneficiaries (the people of the State of Maine) do not take title to the property. Instead, the property is held in trust (by the State of Maine) for the benefit of the intended beneficiaries.

The terms of the Baxter State Park resulting trust incorporate the 1939 agreement between Governor Baxter and the legislature, and the essential terms of the trust are embodied in Title 12, Chapter 211, Subchapter 3 of the Maine Revised Statutes which specifically state that the Baxter State Park Authority is to be composed of three members, each having a specific role in State government, which agreement and legislation effectively designates the three Authority members as trustees of Baxter State Park.

By reconstituting the Authority as a four-person board the legislation creates the distinct possibility, if not the probability, of an Authority deadlock. This is a possibility that should be avoided at all costs. A deadlocked Authority exposes Park resources, including land, flora, fauna, personnel, and endowment at risk, all contrary to the expressed wishes and directives of Governor Baxter that all Park resources are to be held for the benefit of the people of Maine in perpetuity. Park resources should never be put at risk.

Title 12 MRSA §900, Purpose, informs this bill and its consideration and argues against any changes to the trust.

On the question of whether there is a trust relationship between Governor Baxter and the people of Maine see §900, first unnumbered paragraph:

Seldom has a more generous gift been presented to a people than has been given by Percival Proctor Baxter to the people of the State of Maine. *It is incumbent upon them, the recipients, to preserve the trust impressed upon them....* [emphasis added]

On the question of the unique relationship between the donor, Governor Baxter, and his desire that no changes be made to the trust, see §900, ninth unnumbered paragraph:

.... [The State Park] 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]

Governor Baxter was cognizant that later generations, such as this generation and this legislature, may overlook the unique character of the Park and the trust, see §900, tenth unnumbered paragraph, for Governor Baxter's quote on this issue:

"While I am living I fear, no encroachments on the park, but as time passes and new men appear upon the scene, there may be a tendency to overlook these restrictions and thus break the spirit of these gifts."

12 MRSA §900 ends with the following which reinforces the trust nature of the Park and its manner of creation and the fiduciary roll of the Authority:

Solemnly cognizant of the responsibility, it shall always be the purpose of the authority to satisfy the terms of the Trust.

12 MRSA §902 reinforces the trust established between Governor Baxter and the State of Maine as the trust specifically relates to the acquired land making up the Park:

The public reserved lots in the area known as Baxter State Park shall be forever *held in trusts*, and are here declared to be so held, as part of said park not only as respects the interests conveyed to the State by Percival Proctor Baxter but as respects the basic title originally owned by the State. The basic title of each such lot is declared to be held in the

same trusts and for the same purposes as are declared in the deed or deeds of the said Percival Proctor Baxter conveying to the State his interest in such lot. [emphasis added]

This bill has no direct impact on the Baxter Park Wilderness Fund Trust (BPWFT) of which I am a co-trustee. That said, the Authority is responsible for appointing the trustees of BPWFT and applying the unrestricted quarterly distributions to the Park from the BPWFT in an appropriate manner, therefore, we trustees have an interest in preserving a responsive and smoothly functioning Authority.

The Baxter State Park Authority has functioned well for eighty-four years, just as Governor Baxter intended. This legislature should neither tamper with the Authority nor the trust established by Governor Baxter. It is clear to me and others that adding a fourth Authority member, be she or he a Native American or not, is a fundamental change to the terms of the trust and threatens the operational integrity of the Authority. The Authority should remain composed of three members.

The committee should be mindful of the words of Governor Baxter in his attachment to his February 16, 1967 letter to the Authority expressing his opposition to an attempt to increase the number and expertise of the Authority members and his clear rationale for having the Commissioner (now Director) of the Forest Service, the Commissioner of IF&W and the Attorney General constitute the Authority; to wit:

The present Baxter State Park Authority provides the kind of governing body that is best fitted to continue Baxter State Park as I want it to be. The *three* [persons] who comprise the Authority are state employees.... The Forest Commissioner provides the Authority with a person informed in forest management, the Inlands Fisheries & Game Commissions with an interested and informed person in the management of fish and game in forested areas, and the Attorney General with a person interested and knowledgeable in the law and all are interested in people. They have successfully administered Baxter State Park in conformity with my ideas for many years. I want to see their type of administration continued long after I have passed from the scene. [emphasis added]

I urge the committee to allow this bill die without leaving the committee.

Thank you for taking my testimony. I will be happy to answer any questions members of the committee may have.

John F. Loyd

trustees@baxterparkwildernessfundtrust.org