

**Testimony Presented by Howard R. Whitcomb of Brunswick
At the Public Hearing on LD 294
Joint Standing Committee on Agriculture, Conservation and Forestry
February 13, 2023**

Senator Ingwersen and Representative Pluecker and members of the committee:

I am Howard R. Whitcomb of Brunswick. I am a former member of the Board of Directors of the Friends of Baxter State Park and am currently the Friends' Historian. I am submitting these comments as the author of *Governor Baxter's Magnificent Obsession: A Documentary History of Baxter State Park, 1931-2006* (FBSP, 2008) and the annotator of *Percival P. Baxter's Vision for Baxter State Park: An Annotated Compilation of Original Sources in Four Volumes* (FBSP, 2005 and 2008). In this testimony, I will rely on the *Vision* volumes and provide appropriate documentation.

Ever since 1939, the Baxter State Park Authority (BSPA) has been comprised of three members, all of whom have been state employees and on the Authority (*ex officio*) by virtue of holding the offices of Attorney General, Commissioner of Inland Fisheries and Wildlife, and the Director of the Maine Forest Service. These three officers constitute the state's top officials in the fields of law, fish and wildlife management, and forestry.

In the intervening years, there have been two attempts to modify the Authority's membership. I would like to provide background on each of these incidents, so as to better inform your decision-making on the pending measure LD 294. I will be unable to attend the hearing this coming Monday, but would be willing to respond to email inquiries
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The first incident was in 1967, the 103rd Legislature, LD No. 460 AN ACT To Increase Membership of Baxter State Park Authority. This proposal was designed to augment the *ex officio* composition of the Authority by including the elected state representatives from Millinocket and Greenville. The proposal elicited a strong opposition among current, and former Authority members and the measure failed in committee by a 10-1 "ought not to pass" vote. Former Governor Baxter wrote to the Commission members on 16 February 1967 to strenuously oppose the measure. Quoting from that letter:

"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. . . .I regard this bill as a personal attack against what I have done in creating Baxter State Park....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 the passage of this proposed bill." ¹

¹*Percival P. Baxter's Vision for Baxter State Park*, Volume IV, Correspondence Related to Baxter State Park, 7.2 Baxter Park Administration, 7.2.1 Authority's Autonomy. (hereafter *Baxter's Vision*)¹

As a consequence of this incident, Baxter asked Albert Nutting, former Forest Commissioner and University of Maine School of Forestry faculty member, to draft a statement that would capture Baxter's views on BSPA membership. Nutting complied and transferred the two-page document entitled, Baxter Park and Governing Board, via a letter. Baxter acknowledged receipt of the letter on 28 December 1967, by saying "You outlined what I have in mind and I appreciate the thought and time you have put in to get these ideas together." The Baxter Park and Governing Board statement was written in the first person, so it is clear to the reader that it is Baxter speaking. (This document will be referenced again later on in this testimony.)²

The second attempt to modify the Authority's membership was in 1983 when the Joint Legislative Audit and Review Committee proposed a change in the membership of the Authority by substituting the Commissioner of the Department of Conservation for the Director of the Bureau of Forestry. Deputy Attorney General Rufus E. Brown was the author of two documents dated 28 November 1983 and 6 December 1983.³ Brown provides valuable historical background of the Authority since its creation in 1939. He relies heavily on the *Fitzgerald* case [*Fitzgerald et al. v. Baxter State Park Authority et al.* (Me.1978)] and extrinsic evidence to reflect that the present membership of the Authority is consistent with Baxter's intent. Although the Board of Forestry is within the Department of Conservation, it is headed by a Director, who is required to be "qualified by training, experience and skill in forestry." No such statutory requirement is stipulated for the Commissioner of the Department of Conservation, and even if it were, he argued, that the diffuse responsibilities of the Commissioner would preclude the focus on forestry intended by Governor Baxter. According to Rufus Brown, in a conversation I had with him on 11 February 2023, said that the Joint Legislative Audit and Review Committee dropped the proposal.

Fitzgerald may be the most significant appellate court decision regarding the Baxter deeds of trust. It has been cited often, and the opinion by Chief Justice McKusick provided a definitive historical account of the deeds of trust over the 31 year period and the establishment of the trust accounts for the care, operation and maintenance of Baxter State Park.

Within the aforementioned memoranda written by Deputy Attorney General Brown are extensive excerpts from the two-page memorandum written by Al Nutting on behalf of Percival P. Baxter in late 1967. The memorandum, in its entirety, speaks clearly of Baxter's intent to establish a three-member, *ex officio* Authority, all of whom are state employees, and expert in their respective fields, i.e., law, fish and game management, and forestry.

² *Baxter's Vision*, Volume II, Attorney General Opinions 3.3 Baxter State Park Administration, 3.3.1 Separate Identity – page 6 of letter, dated 6 December 1983, from Deputy Attorney General Rufus Brown to Senator G. William Diamond, Co-Chair of the Audit and Program Review Committee.

³ *Baxter's Vision*, Volume II, Attorney General Opinions, 3.3 Baxter State Park Administration, 3.3.1 Separate Identity.

Quoting directly from the memorandum, “Baxter Park and Governing Board”:

“The present Baxter State Park Authority provides the kind of governing body I believe best fitted to continue Baxter State 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 management, the Inland Fisheries & Game Commissioner with an interested and informed person in the management of fish and game in forested areas, and the Attorney General with a person and 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 have passed from the scene.”⁴

I hope this historical background will be of use to your committee members during their deliberations.

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⁴ *Baxter’s Vision*, Volume IV, Correspondence Related to Baxter State Park, 7.2. Baxter State Park Administration - 7.2.1 Authority’s Autonomy

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Brunswick
LD 294

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In the intervening years, there have been two attempts to modify the Authority's membership. I would like to provide background on each of these incidents, so as to better inform your decision-making on the pending measure LD 294. I will be unable to attend the hearing this coming Monday, but would be willing to respond to email inquiries
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"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. . . . I regard this bill as a personal attack against what I have done in creating Baxter State Park....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 the passage of this proposed bill."

As a consequence of this incident, Baxter asked Albert Nutting, former Forest Commissioner and University of Maine School of Forestry faculty member, to draft a statement that would capture Baxter's views on BSPA membership. Nutting complied and transferred the two-page document entitled, *Baxter Park and Governing Board*, via a letter. Baxter acknowledged receipt of the letter on 28 December 1967, by saying "You outlined what I have in mind and I appreciate the thought and time you have put in to get these ideas together." The Baxter Park and Governing Board statement was written in the first person, so it is clear to the reader that it is Baxter speaking. (This document will be referenced again later on in this testimony.)

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Quoting directly from the memorandum, "Baxter Park and Governing Board":

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