



## MEMORANDUM

**Date:** February 27, 2023

**To:** Baxter State Park Authority

**From:** Dan Rinard, Director of Operations

Kevin Adam, Acting Chief Ranger

Lori Morrison, Director of Administrative Services

Nava Tabak, Natural Resource Director

**Subject:** Staff opinion regarding whether L.D. 294, if enacted, would violate the Terms of the Baxter State Park Trust

L.D. 294 (131st Legis.) would amend 12 M.R.S. § 901 to add a fourth member to the three-member Baxter State Park Authority (the Authority). (The Authority consists of the Director of the Bureau of Forestry, the Commissioner of the Department of Inland Fisheries and Wildlife, and the Attorney General.) Per L.D. 294, the proposed fourth Authority member would be a member of a federally recognized Indian nation, tribe or band in this State. As with all decisions related to Baxter State Park, L.D. 294 requires consideration of whether, if enacted, L.D. 294 would violate the terms of the Baxter State Park trust as established by Governor Percival Baxter (the Trust). Based on staff's review of the deeds of trust and other trust materials, it is staff's opinion that the makeup of the Authority is a likely term of the Trust and that if enacted L.D. 294 would violate the terms of the Trust.

As a private citizen, former Governor Baxter conveyed to the State the real property comprising Baxter State Park through deeds of trust. Successive Legislatures then enacted those deeds of trust, including Governor Baxter's 1955 interpretation document, as private and special laws. In Governor Baxter's words, the State "entered into solemn pacts that create a succession of irrevocable trusts."<sup>1</sup> As stewards of Governor Baxter's vision, protecting and enacting the terms of the Trust are the primary objectives of the Authority and its staff.

Because Baxter State Park is a charitable trust, the Authority and its staff have a fiduciary responsibility to manage the Park in a manner consistent with the terms of the Trust. "Solemnly cognizant of the responsibility, it shall always be the purpose of the [A]uthority to satisfy the terms of the Trust."<sup>2</sup> Historically, proposed changes in membership of the Authority have been considered a violation of the terms of the trust.

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<sup>1</sup> Whitcomb, Howard R. and Friends of Baxter State Park, "Percival P. Baxter's Vision for Baxter State Park: An Annotated Compilation of Original Sources in Four Volumes. Vol 1" (2005). Governor Percival Proctor Baxter Documents. 3. Part 1, Page 7.

[http://digitalmaine.com/baxter\\_docs/3](http://digitalmaine.com/baxter_docs/3)

<sup>2</sup> 12 M.R.S. § 900.

Governor Baxter considered the specific professional roles of the Authority members to be an important aspect of the trust he created. In an opinion dated December 28, 1983, Deputy Attorney General Rufus Brown cited “All of the background that lends strong support for the conclusion of our own Law Court in Fitzgerald, supra, 385 A.d.2 at 202-203: The membership in the Authority, obviously selected by Governor Baxter himself and ratified by him in his subsequent gifts, consists of the State’s principal officers in the professions of the law, forestry, and fish and wildlife management.”<sup>3</sup>

In 1967, L.D. 460 proposed to add two members to the Authority. Governor Baxter strongly opposed this change in the membership, writing: “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.” The measure failed by a 10-1 vote “ought not to pass”.<sup>4</sup>

Further, Governor Baxter made clear, both in his words and his actions, that he wished the Park to be independent and insulated from political influences, and the creation of the Authority was an important element of fulfilling that intention. The Park is an independent quasi-state agency and large charitable trust; it is not a part of the State’s Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands. Governor Baxter also ensured that the Park would be financially independent by personally funding an endowment for its operations, and the Park uses no state General Fund dollars.

Title 12 M.R.S. § 901 states that the Director of Forestry, the Commissioner of Inland Fisheries and Wildlife, and the Attorney General “shall have full power in the control and management of [Baxter State Park]”. Park staff considers that legislative statement reflective of and consistent with the terms of the Trust. Legislative attempts to alter the makeup the Authority from what Governor Baxter ratified—the State’s principal officers in the professions of the law, forestry, and fish and wildlife management—or make management decisions in lieu of the Authority, may invite the sort of political influence from which Governor Baxter intended the Park to be free. This is clearly counter to Governor Baxter’s intent and vision.

The Authority and staff engage regularly with members of the public through volunteer Advisory Committees that support various aspects of park management. A General Park Advisory Committee provides broad support and advice and serves as a proxy for the people of Maine. Additionally, there is an Investment Committee, a Research Committee, and a Scientific Forest Management Area Advisory Committee- these are specialized committees that narrowly focus on Trust investment, scientific research, and forest management. Park staff welcome tribal member participation and deem that including a

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<sup>3</sup> Brown, Rufus, Deputy Attorney General opinion re: Baxter State Park Authority (1983).

<sup>4</sup> Whitcomb, Howard R. and Friends of Baxter State Park, "Percival P. Baxter's Vision for Baxter State Park: An Annotated Compilation of Original Sources in Four Volumes. Vol 4" (2005). Governor Percival Proctor Baxter Documents. 5. [http://digitalmaine.com/baxter\\_docs/5](http://digitalmaine.com/baxter_docs/5)

tribal member on the General Park Advisory Committee would allow the Tribes to contribute to the management of Baxter State Park without violating the terms of the Trust.