

MEMO

From: The Wilderness Society and Idaho Conservation League

Date: February 22, 2017

Re: Idaho Department of Lands Records Indicate Violations of State Constitution with Oversized Land Sales

Building off TWS's [May 2016 report](#), The Wilderness Society and Idaho Conservation League have continued to research the history of privatization of state land in Idaho. Our most recent examination revealed an unsettling pattern: broad and widespread liquidation of state lands in direct violation of the Idaho Constitution. In short, Idaho has a decades-long pattern of violating the anti-corruption provisions in the Idaho Constitution intended to prevent land that belongs to all Idahoans from being stockpiled by private interests.

The sales in question span nearly a century, from statehood in 1890 until sales in the 1980s.

It's important to note that TWS and Idaho Conservation League are not accusing the current Land Board or Department of Lands of any wrongdoing. At the same time, this historic context is critical to understanding the current agenda of public lands takeover proponents and the ongoing lack of transparency and oversight of state land sales.

Here is the story in a nutshell:

- When Idaho became a state, Congress granted 4.2 million acres of land to state ownership. The mandate for this land is to generate funds for schools and other specific beneficiaries.
- From those early days, Idahoans were concerned about private interests trying to amass those state lands into private hands. So, the Constitution includes clear language tightly limiting how much of those lands can be purchased by any individual, company or corporation.
- Our analysis revealed 300 instances where these limits appear to have been violated. Some entities amassed acreages several times beyond those limits.
- The findings are directly applicable to current political debates. Across the West, some politicians and special interests say national forests and other federal lands should be turned over to state hands. This pattern demonstrates the importance of keeping public lands in public hands.
- Currently, the Idaho Legislature is considering a bill, [SB 1065](#), which would require all state agencies to prioritize the privatization of state lands.
- We are calling on the Idaho Board of Land Commissioners to investigate these questionable land sales and to make reforms necessary to ensure future sales conform to the Idaho Constitution.

Key Findings

- 293 separate individuals, businesses and corporations appear to have violated the Constitution by exceeding the 320-acre limit imposed by the Constitution on State owned "public school" lands, which are managed to benefit public schools.
- 7 separate individuals, businesses and corporations appear to have violated the Constitution by exceeding the 160-acre cap imposed by the State Constitution on State owned "university land," which is managed to help fund the University of Idaho.

- A total of 919,914 acres of state land that were managed to benefit public schools and universities have been sold since statehood, and of that acreage 206,240 acres appear to have been sold in violation of the limits imposed by the Idaho Constitution.
- Boise Payette Lumber company, (precursor to the Boise-Cascade Company) one of the largest purchasers of state lands in Idaho, purchased a total of 7,091 acres of public school lands.
- In the early 1900's, 24 different individuals purchased land for Osgood Livestock company, totaling 5,948 acres of state land.
- Potlatch Timber Company purchased a total of over 23,000 acres of state land, 3,914 acres of which were "school lands," and were subject to the acreage limitation.
- The most recent apparent violations identified occurred in 1983 and 1987, where two separate individuals purchased 460 acres and 1,200 acres respectively.

Background

There are many different categories of "state" or "endowment" land, but the Constitutional cap on purchases of state land applies only to "public school" and "university" state lands, which comprise the majority of state lands managed by the Idaho Department of Lands (IDL). The lifetime cap was initially set at 160 acres. In 1916, the limit on "public school" acres that could be legally purchased under the State Constitution was raised to 320 acres for any one individual, business or corporation; and in 1982, the Constitution was changed once more to include all categories of state land under the Constitutional cap of 320 acres.

In a letter analyzing the findings from the Idaho Attorney General's office to Representative Ilana Rubel (Dist. 18), the AG office confirms that a reviewing court "would most likely find that the acreage limitations...are lifetime limitations..." and that the Idaho Land Board "has ultimate responsibility for ensuring that the acreage limitations are not exceeded."

While it is legal for any citizen to purchase up to 320 acres of public school lands or 160 acres of university lands, it is unlawful for individuals to purchase lands over the Constitutional limit if they are to be used to benefit the same individual, business or corporation. In other words, a business can't send 10 representatives out to each buy 320 acres, and then transfer ownership of that to the company.

What Does This Mean for the Public?

This revelation, coupled with the long history of state land sales in Idaho, calls into question the claims by some lawmakers that if Congress gives public lands to the states, the states won't sell it off. As the newly released records make clear, Idaho has a long history of questionable land deals that have benefited wealthy landowners and industries. The Idaho Supreme Court has found that state "endowment lands are part of a sacred trust reserved for the benefit of Idaho's schools and public institutions. The Board, which manages those endowment lands is the epitomatic public trustee."

This is a telling sign of what we could expect in the future if public lands were given to the State of Idaho: private interests are acquiring large parcels of land and the public has lost access for camping, hiking, hunting, fishing and other recreation.

For more information:

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