

Thank you Chairman & Committee

My name is tom wielgos. I live on Priest Lake and now own the land underneath my house so I am a past lessee and now a free Idaho citizen. I and my wife Vicki drove and drove and drove down here to tell you what is opposing the beneficiaries. Now with buying under duress at an auction for a way over value, we are free to be free. Free to tell you the truth as a knowledgeable, "been there done that" but now can't afford the tee shirt citizen. Should I hold back? Well some, actually a lot. But not everything.

Before I really get going, let me complete ^{some} ~~so~~ open thoughts of yesterday and set the foundation of my testimony.

First : Even without adding what will come later in this testimony, Commercial cannot be anything but illegal. The constitution in VII.3 gives specific instructions to the legislature to define property and these definitions are to be used "herein" including Article 9 Section 8 and in the directed flowdown statutes. You did this in 55-101A where you said land is dirt. Period. End of story as far as commercial goes. Commercial acquisitions were and are illegal. This definition cannot be undone by any unrelated court decision. The court would have to say 55-101A is unconstitutional—that can't happen! Not to say this 55-101A definition should not be changed to include a bit of infrastructure so as to allow for exchanges for timberland and agriculture land with a road or a bridge or a barn or an irrigation system.

Also....I am the public. I can guarantee that the public does not like the selling of Idaho one little bit and giving it to wall Street. Idahoans would much prefer keeping Idaho land while upgrading to better lands thru exchanges. These studies ^{that} Co-chairman Vander –Woulde alluded to-- like the one time lauded Heartland study— saying "go commercial" just a few years ago which is still in the asset management plan are temporary / short lived. Now another year

long \$100,000... kick the can down the road... delay... temporary report. The "constant" (starting in the constitution convention) is good Land providing timber and food --- ... and its jobs flowdown benefits to the beneficiaries provides permanent/ long term returns. I urge the legislature to see it the way logic and the public all the way back to 1889 saw it and directs action accordingly.

Let's also add Paul Harvey's "the rest of the story" to the example of the Payette cottage site IDL rented for a year that they brought forward yesterday. It was a turned back in land and cottage as the lessee could not pay the Board set a rate of \$46,000 per year for just the land. They did as close to the required arm's length rental auction that can be done without an actual real public auction. They put it on the open market with no implied right to eventually buy and no duress of losing cabin value at the end of the lease.

They got \$10,000 NET for both the land and the cabin. The market said the real value is less than 20% of the Board set ratewithout the non arm's length potential carrot of a buy or the duress (or blackmail) factor of having to pay to tear down the valuable cottage. You noted they said they did not re-rent it ... as it told the truth on rental value.

Seems I wanted to jump up and comment on a lot of the panel questions yesterday.

Today's testimony will be on legal stuff. I am not an attorney. My formal skills are limited to only designing airplanes that you entrust

the lives of your family to. However, in this rotunda are words that say laws are written so that everybody can understand them.

The Supreme court, in the Wasden case that the AG's office loves to flaunt, says look at the plain and simple words of the constitution and the intent of those words as provided in the convention verbatim. So I did. I looked at the plain and simple words... Up to 12 hours a day 7 days a week as we cottage site lessees were treated unfairly and, if plain and simple words mean anything, we were treated illegally. Not just cottage site lessees but all 5000+ "lessees" and the trust beneficiaries have been the victim of what I believe are easily provable "irregularities".

The excuse that 3 way trades are too difficult. The key word is EXCUSE. This has been done here. From what I heard yesterday from Mr. Lynn Thomas, it appears he too has read the plain and simple words of the constitution. *It been done in*

Yesterday we heard from Todd Hatfield. Amazing to me - that when looking into things, I found exactly the same things... and more. Much much more. He said be prepared for push back. *other states with no problems. Using/ demanding outside resources*

Your Psyk 101 class told you self-justification is the most powerful emotion we have. So be prepared for mumbo jumbo pushback.... not plain and simple words. Just one example of mumbo jumbo you got was in yesterday's mention of the AG's letter of 3 March when the was "forgotten" to be mentioned part was that the mumbo jumbo of the letter advising you that you had no right to pass Senator Keough's SB1277 was ripped apart with plain and simple words coming from your independent council, Dave Leroy,when it was introduced right in the middle of the House committee. and you recognized it

for what it was and passed SB 1277 97-2. Please continue to look for independent council and plain and simple words.

We also know but it is repeated in Brent Hill's opening comments in his book: A Matter of Principle:

As people acquire power, they have a proclivity to misuse it.

The longer people possess power, the more likely they are to abuse it

We are each responsible for our actions (and please let me add "inactions")

Your English teacher said to present paragraphs in three parts: Tell'em what you are going to tell em.. the tell em and why and then tell them what you told them.

So here we go..... Buckle up. Seats in the upright position. Emergency exits are to the rear of this room.

Some Problems

1. All existing endowment land rentals are and have been unconstitutional. They are illegal They are void. Lessee remedies against the Board and legislature are many.
2. Land Board has been remiss (as in violation of their fiduciary responsibility) for the last 125 years in addressing the constitutional mandate to “judiciously locate” land to maximize the long term financial returns to the beneficiaries.
 - a. Cottage sites with joint ownership are a legal nightmare
 - b. 1.5M acres of range lands returning negligible returns

Solutions

1. Get independent constitutional legal counsel for this committee and the ensuing legislative session.
2. Revise at least 15 illegal statutes on leasing and *land* acquisitions to make them constitutional:
100% public auctions are required.
Only LAND acquisitions are allowed
3. Insist on a leasing “timeout” until legislature can pass the above required constitutional legislation.
4. Enact specific legislation to, FINALLY after 125 years, follow the constitution and “judiciously locate” lands to maximize long term returns to the beneficiaries thru the authorization of rapid land exchanges.

Personal Comment: The seemingly simplistic Constitutional amendments to revise the way land can be sold are a lost cause. They are not required...would take too long, will fail with the public smell test (as it did in the convention) and will be counterproductive to the beneficiaries with the public. Revising the Board makeup would be a different story

It is further suggested that this committee be funded and extended thru next year to complete an independent fiduciary, civil law and criminal law forensic examination. I am one of many that has drawers full of data.

The Board and lessees have learned that a total disregard for the law is easily covered up by the manipulation of the press saying what we are doing is for the kids. Well, violating the law has only one eventual outcome: Ramifications. Ramifications in the form of restitution. Restitution in the form of a lot of money that the legislature is legally bound to cover.

I was gratified to see all of the 13 things this committee is to look into; ~~including:~~

I wish "transparency" specifically noted the worst violations of the word "appraisal" the State has ever seen. Resulting in duress to lessees on many fronts.

This is a long and well deserved list. You voted 102 to ZERO to look into these things... and good for you. Now... to actually do something about it.

Two shows : TV's Walter Cronkite's "And you are there" of 1953-1957... 1971-1972 which for nostalgia buffs started with:

"What sort of day was it? A day like all days, filled with those events that alter and illuminate our times... all things are as they were then, and you were there."

And Paul Harvey's radio show "The rest of the story"

So let's go back to the constitutional convention This convention's verbatim has been used by the Courts when clarification and understanding of the intent of the meaning of the plain and simple language of the constitution is needed So let us go there .. "and you are there"

This section of the constitution got A LOT of attention for two reasons:

1. This was BIG money—the only real money they had to work with. Only 2% of the value of endowment land at the time would be required (in 1889) to pay for the ENTIRE government.
2. Endowment Lands in earlier admitted states were plundered by "speculators" (A word used often). "Speculators" within the delegates wanted a set price (as low as a buck 25 an acre using earlier Federal guidelines) and then swoop in and buy the good

stuff for a low set price. This factoid will set the stage why
“public auctions” with no set “fair” price was established.

There were three viewpoints on land:

The above noted speculators. Fixed low price for speculators.

Those that thought all land should be sold for what it is worth thru
public auction so as to get it into private taxpayer hands.

And those that wanted nothing sold so as to keep Idaho’s lands.

There was also a repeat of the lrgal pecking order of Endowment land
management:

The Admissions act

The Constitution

Future legislators

The Land Board (not the executive branch)

IDL

It was also clear that agreement on only the “skeleton” was to be
provided in the convention (the Constitution) and all details are to be
left to the “honorable men”, their words, not mine Shawn of
future legislators---such as yourselves.

The courts understand this and are written and they do not violate
the constitution’s “skeleton”, legislation prevails.

And you are there.....

Wasden v. State Board of Land Commissioners. Opinion No. 104 June 27, 2012.

Legislature **can and should** tell Land Board specifically how to provide for:

“direction, control and disposition of the public lands.”

“the location, protection, sale or rental of all the lands”

“ at the earliest practicable period... land shall be judiciously located and carefully preserved”

Directly must...

“shall provide for the sale of said lands (and timber) from time to time ... and

faithful application of the proceeds.”

“authorize the state board of land commissioners to exchange granted or acquired lands.”

We heard that exchanges are in conflict with the auction mandate.

Actually there is no mandate to provide deeds thru public auctions.

The constitution provides two separate legal avenues to do this.

Exchanges are in many cases the preferred if not the only tool to use.

SB 1277 underscored this and made 3 way exchanges abundantly legal

as is the right and duty on the legislature. It is incumbent on the

legislature to finally, after 125 years, use all tools to direct judiciously

locating lands to get the greatest long term returns possible. Long term is not 10 years it is 1000 years.

This committee is convened for a reason:

There are at least 15 statutes that must be revised

From yesterday's meeting, it is obvious that Legislators must get their own constitutional legal council

Must stop pending illegal leases until constitutional statutes are enacted to reduce liabilities. Risks/ramifications are inevitable if this is not done.

Authorize (legislate) exchanges and exchange process (including 3 party exchanges) to get out from public auctions (reduce liabilities) and enhance long term returns to the beneficiaries. This does not violate the constitution (actually it is what the constitution demands of legislators) and provides what a prudent investor should have done 125 years ago.

**From: Wielgos@aol.com
To: secstate@sos.idaho.gov
CC: dgoicoechea@sco.idaho.gov, jhancock@sde.idaho.gov
Sent: 11/4/2013 7:42:04 A.M. Pacific Daylight Time
Subj: Appraisals are irrelevant for leases**

“The language of Art. IX Sec. 8, unambiguously requires that any disposal of endowment land must be at public auction. Disposal means any lease or sale.” p. 12

“...the Board must hold auctions for any lease, every aspect of the statute that relates to something other than auctions is either moot or superfluous. After all, the Board has a constitutional obligation to maximize long-term financial returns, which is akin to requiring it to “insure that **each leased lot generates market rent” p 12**

“..detrimental aspects of auctions are irrelevant.” p.12

“Thus, Art. IX, Sec. 8, requires public auctions for leases of endowment lands.”

Leases and rents are the same thing. Rental and lease were used in the convention interchangeably and even the constitution uses rental in one place and rental in another.

We heard disposal was the exclusive use of land. Think about the fact that every storage unit rented (disposed of) is for its exclusive use.

Courts have consistently held that auctions and leases without public auctions are “void”. No matter what statutes allow.

Courts have said in relation to no auctions:

¹⁰⁶ “[T]he legislature cannot authorize the land board or anyone else to do any act with reference to state lands

that is forbidden by the constitution(this) is in violation of the fundamental laws of the state, and would be **void**.

Am I going out on a legal limb with an engineering degree? So where can I go to get a respected official legal opinion from an attorney that had every reason to self-justify prior actions of approving these illegal leases. A past Attorney General was asked for and delivered an official opinion on whether statutes providing for alternatives to 100% public auctions were constitutional, whether leases are legal and whether there are remedies available to lessees for illegal leases.

Official legal opinion affirmed the plain and simple language in the Wasden ruling:

Statutes for anything other than 100% public auctions are unconstitutional

Leases are illegal

There are many possible remedies.

The rest of the Story

ENDOWMENT TRUST FRAMEWORK

☐ Land Board “to provide for the protection, sale or rental” of endowment lands. ... “under such regulations as may be prescribed by law”

☐ Lands to be managed by legislature and the Land Board “in such manner as will secure the maximum possible amount therefor.”

☐ “ The legislature shall, at the earliest practicable period, provide by law “ how Lands to be “carefully preserved and held in trust.”

☐ Lands “subject to disposal at public auction.” AMAZING that the AG highlighted this to the committee as they are violating this mandate on all leases.

☐ Legislature to provide for the sale of lands, exchanges and for the sale of timber. Sale to only individuals, companies and corporations. Exchanges add units of government.

☐ Legislature to “provide for the faithful application” of proceeds.

Wasden had a slam dunk suit. Now lords it over everyone and uses it to bully his way around. He had many consistent rulings to ensure success:

Balderston v. Brady 1910

Pike v. State of Land Commissioners (1911)

Toby v. Bridgewood (1912)

Barber Lumber Company v. Gifford (1914)

Hammond v. Alexander (1918)

E. Side Blaine County Livestock Ass’n v. State Board of Land Commissioners (1921) where no actual auction took place)

Several Idaho Watersheds Project (Jon Marvel) v. Land Board actions

Culminating in:

Br. Batten; “Establish a system which the board of land commissioners, after they have **all the details of its working given to them by the by the legislature**, shall carry out. One legislature may adopt one system, and a subsequent legislature may change the whole system and adopt something new, but ^{my} (the) idea is to put up certain fixed barriers, certain well defined principles as sort of a skeleton, and leave the filling in to be done by the legislature.”

So what is the Skeleton that was provided left to be fleshed out and dressed by legislation?

The legislature **cannot** legislate or authorize anything violating the “skeleton” of the Constitution:

1. That which a prudent investor would think would not provide “**maximum long term financial return to the institution**” and this would have to be blatant abuse of a prudent investor. Direct and indirect returns per Barber Lumber v. Gifford

Legislature can even “authorize” a specific land exchange if it is prudent to do so. Not only can this be but done, It was done in 58-156

2. Granting any privileges to persons who may have squatted upon endowment lands.

3. 100% public auctions to sell ,rent/lease lands. Disposals are sales, rents, leases, land use permits.... “Or anything else”. no exceptions.

This is it! Everything else is left to legislators; past, present and future legislators.

NOTE.. Absence of law allows the Board and IDL to make up any laws they want and courts allow it. This is where the statement can be made that the courts backing up the Board can make any decision they want. With the lack of laws, the Board has a get out of jail free card

Back to what cannot be done....

The “public auction” requirement was insisted on... and insisted on... and insisted on as a way to thwart any “speculator” attempts including a last minute attempt to have private people get title thru mortgaging the land.

Even selling/auctioning on the instalment plan was tried and stopped (in the convention) and the meaning of public auction underscored.

Mr. Claggett: “But you have put it in your constitution that it shall be sold only at public auction.”

Mr. Mc Connell “It can be sold on the installment plan.”

Mr. Claggett “**No sir.** The language, sale at public auction is a legal phrase that has a well defined meaning, that cannot be wrested away from it in any way.”

What were the delegates getting at here? What is the legal phrase that has a well defined meaning that cannot be taken away

Even then the known legal definition is just what you and I think it is;

Vermont Governor Stewart

There are only two classes of men that are really entitled to very great credit in this world in the in the civil sphere, ---the founder of the state **and the saviors of the state.**

Section 7. STATE BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state, attorney general and state controller shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, **under such regulations as may be prescribed by law.**

Section 8. LOCATION AND DISPOSITION OF PUBLIC LANDS. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, **under such regulations as may be prescribed by law**, and in such manner as will secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. **The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be**

judiciously located and carefully preserved and held in trust, subject to disposal **at public auction** for the use and benefit of the respective object for which said grants of land were made, and **the legislature shall provide for** the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation. **The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands** of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.

By 1877 starting in Dakota and California and other states (and later in Idaho *Barber Lumber v. Gifford 1914* ruling) “auction” was well defined:

“An auction sale is a sale by public outcry to the highest bidder on the spot”.

Note: *Barber* allowed an addition to a cash bid. In this case, a railroad spur generating indirect benefit to the beneficiaries.

How about a “reserve” auction. At the last minute, as an additional hedge to the Speculators buying land with a less than open auction, they did add appraised value for a minimum deed sale.

In testimony it was alluded to that public auctions were a part of the rental process Not at all.

As, on rentals, delegates acknowledged that no one could set a value on leased land except thru an open auction. There are just too many influences on temporary use of land and restrictions that could be placed on rentals to set any “fair” rentals.

The feel of the convention is no shenagans. No government setting of anything.

Convention verbatim:

“What are the current proposed amendment words? Secretary reads: “...for the location, protection, sale or fair rental of lands”

Mr. Grey: “Strike the word “fair” out”

And therefore no minimum bid is found in the rental public auctions. Not being there means it was not intended to be there. To meet the

intent of on the plain and simple words of the constitution there can be no set minimums on rental public auctions.

Expanding the public auction discussion. It is required on everything...

There is a legal review made by the Arkansas Law School on a "good example of a bad example" of Idaho trying to circumvent the Constitution on 100 % public auctions. It is titled:

Comedy of Errors or Confederacy of Dunces?

This scathing analysis goes on and on about every time public auction hits the courts, starting in 1910, the Courts say: All disposals must start with public auctions ..or ...What about 100% public auctions for sales and renting do you not understand?

This Arkansas report would have a field day with the current statutes and the AG's recent suit against the Board. This suit is continuously brought up..... but salient quotes are not highlighted--- for some reason! But I will show you just some of them:

"The A.G. contends that Art. IX Sec. 8, requires a public auction for any disposal of endowment land, and that a lease of endowment land is a disposal within the meaning of the provision." p. 5

"The Board breached its duty as trustee when it failed to lease endowment lands to the highest bidder in a public auction." p. 10

Secretary of State Ysursa:

Basic premise of this message is your comment several months ago in a Land Board meeting that lease rates are “elusive”. How right you are and the constitution founders agreed with you and provided for this elusiveness. And best not to be playing defense in another Board meeting that is open to public comment (Nov.5).

The law seems clear that the AG is responsible for Land Board legal advice. However, in regard to the cottage site lease process that the AG sued to get clarified, one might want to independently review the Constitution, the constitution convention and this ruling. One could come to the conclusion (like several attorney legislators have) that:

- 1) **Appraisals for lease purposes are irrelevant** and a continuing waste of time and money.
- 2) The conflict auction process is therefore irrelevant.
- 3) **The Board cannot approve a lease program that does not have all leases based on public auctions.**
- 4) Public auctions for split ownership properties have legal and fiduciary problems.
- 5) **Legislators are responsible for this lease process** and making it constitutional.
- 6) Lease extension to be proposed should be modified to: one year for time for legislators to figure out and document this process and for IDL to implement.
- 7) The faster the State can get out of the cottage site business, the better. Outside experts to facilitate this process appears to be a requirement.

First thing to be reviewed in the ruling are the many times repeated words like:

- 1) “The Attorney General contends that Article IX, § 8, requires a public auction for any “disposal” of endowment land and that a lease of endowment land is a disposal within the meaning of the provision.”
- 2) **“The Board does not have the discretion to grant a lease to an applicant who does not place a bid at an auction”**
- 3) “The Board breached its duty as trustee when it failed to lease endowment lands to the highest bidder in a public auction”
- 4) “Findings about the detrimental aspects of auctions are irrelevant”

Therefore, well... self-evident something other than the existing plan needs to happen. So what does need to happen and by who?

Answering this starts with the lengthy discussion in 1888 on whether to sell endowment lands for a set rate of \$1.25 per acre as suggested in the Admissions Act or “ \$8 \$ 10 maybe 20, 25 or 30 dollars” an acre. ... Or to have the market, via public auctions, determine value as there is too much variation in values. Rent rates followed the same logic. One can recognize the negatives now affecting what cottage lots are worth. Rents had to be set by the Board when there was a continuation statute, but not now. The market must set rents via public auctions. As an example: if picked up on in recent testimony by Ed Ogara and Marty Berk, the Board set the rent value of just the land at \$46,000 a year. However, once obtained by the State, IDL used an agent to rent the same land and house for the highest possible amount. The market said \$14,400 per year (\$10,000 net after fees). You and the founding fathers are right, rent values are too “elusive” to be set by the Board and must be determined by the market. Only way to get \$46,000 is by the duress of the contract and disposition of homes.

Current statutes on lease rates say go the easy way of arbitrarily setting these elusive rents for a conflict auction process and public auctions are only needed on condition. “The Board (and the legislature) does not have the discretion” to do this. Of course the Board can reject an unreasonable bid. But what is “unreasonable” with the Payette data and what happens to improvements if a bid is rejected?

So after Wasden’s ruling **and per...**

SECTION 8. LOCATION AND DISPOSITION OF PUBLIC LANDS. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, ... under such regulations as may be prescribed by law...

AND per Idaho Constitution V-25 (and even V-10 with some definitions of “claim”), is back to the legislature to fix the statutes.

Yes, the legislators will earn their salary as public auction requirement has risks in a split ownership world and cannot have any duress. The amount of money some put into improvements at the height of the market when there was continuation is valued at much less than now. So current lessees are under duress to keep their investment.

Exchanges for land not affected by new public auction requirements are not affected by the above. They **are a major part of the solution**. Expedited action to reduce the problem thru legal and fiduciary responsible exchanges to timber and other agriculture lands which are already efficiently working within the public auction business model should be the Board’s very next steps. ... Together with Constitution V-25 and V10

Tom