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Wasden v. State Board of Land Commissioners Cross Appellant's Brief 3 Dckt. 39084

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IN THE SUPREME COURT OF THE STATE OF IDAHO

HON. LAWRENCE G. WASDEN, in his capacity as
Attorney General of Idaho, ex rel STATE
ENDOWMENT LAND BENEFICIARIES

Plaintiff-Appellant-Cross Respondent,

v.

STATE BOARD OF LAND COMMISSIONERS,
and GEORGE BACON, in his official capacity as
Director of the Idaho Department of Lands,

Defendants-Respondents-Cross Respondents,

and

GLADYS BABCOCK, et al.,

Defendants-In-Intervention-Respondents-
Cross Appellants

and

PRIEST LAKE STATE LESSEES ASSOCIATION,
INC.,

Defendant Intervenor-Respondent-Cross
Respondent.

GLADYS BABCOCK, as Trustee of the BABCOCK
TRUST, et al.,

Plaintiffs-Cross Appellants,

vs.

STATE BOARD OF LAND COMMISSIONERS,
and GEORGE BACON, in his official capacity as
Director of the Idaho Department of Lands,

Defendants-Cross Respondents.

Supreme Court Docket No. 39084-2011

Ada County Docket No. 2010-23751

Ref. No. 11-666

Valley County Docket No. 2010-436



**CROSS-APPELLANTS' REPLY BRIEF RE: CROSS-APPEAL OF THE CONTRACT
CLAIMS**

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

HONORABLE MICHAEL R. MCLAUGHLIN, DISTRICT JUDGE, PRESIDING

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ANALYSIS IN REPLY

A. The District Court's Subsequent Decision on the Lessees' Petition for Judicial Review Does Not Render this Appeal Moot

Subsequent to the present decision and present appeal, on January 20, 2012, the district court entered a decision on the Lessees' petition for judicial review regarding the breach of contract claim. (Attached hereto as "Exhibit B") (hereinafter referred to as the "Decision on Petition for Judicial Review Re Contract Claims").¹ The Lessees disagree with the Land Board's position that the denial of the petition for judicial review renders Lessees' claim for breach of contract moot.

The Decision on Petition for Judicial Review Re Contract Claims reviewed the Lessees' claim of breach of contract pursuant to Idaho Code § 67-5279(2), which provides:

When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; or (d) arbitrary, capricious, or an

¹ This memorandum decision was entered in connection with CV-2011-16C and CV-2011-191C, and is not part of the present record on appeal because it is a separate consolidated action filed by the Lessees. It is provided to the Court for reference as to the district court's decision on the Lessees' petition for judicial review of the Land Board's actions that Lessees' alleged breached the 2001 lease. As explained in Lessees' Opening Brief as Cross-Appellants, Lessees filed four petitions for judicial review (two regarding the contract claims and two regarding the constitutionality claims) in this matter in order to timely contest the Land Board's decisions/actions at the December and April meetings. The district court's memorandum decision addressed the Lessees' petition for judicial review of the Land Board's actions at the December 2010 and April 2011 meetings as they relate to the lease renewals (contract claims). Lessees have appealed that decision (in addition to the present appeal) and seek review before this Court as to whether the district court erred in denying Lessees' petition for judicial review and whether the Board action was in error when it failed to renew the 2001 Lease pursuant to Lessees' request.

abuse of discretion. If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

Idaho Code § 67-5279(2). Although, as highlighted by the Land Board, the district court went on to interpret the 2001 lease renewal provision, it did so under the APA standard of review. That is, rather than interpret the claim that the Land Board breached its lease, the court examined whether the Land Board's actions that breached the lease were a violation of Idaho Code § 67-5279(2). Although this is the appropriate standard of review for the Lessees' petition for judicial review, this is not the appropriate standard of review for the Lessees' civil action alleging a breach of lease.

Under the umbrella of this standard of review, the district court then denied the Lessees' petition for judicial review of the contract claims and found that the Land Board's action and decision to not renew the 2001 leases was valid. Exhibit B, p. 11. In other words, the district court found that the Land Board did not (a) violate a constitutional or statutory provision; (b) act in excess of statutory authority; (c) act upon unlawful procedure; or (d) act arbitrarily, capriciously, or abuse its discretion. *Id.*; see also Idaho Code § 67-5279(2). This is not the same relief that the Lessees have requested through this breach of contract claim; that is, the Lessees have requested that the Court analyze the Lessees' contract rights.

The Land Board argues that there is no justiciable question as to whether the Land Board breached its contract because "the district court's disposition of the judicial review petitions predicated on the Land Board's alleged breach of contract resolved the merits of the Payette Lake Lessees' claim in this matter." *Respondents' Brief in Cross Appeal*, p. 12. In order for a

live controversy to exist, “[t]he controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *Wylie v. Idaho Transportation Board*, 151 Idaho 26, ___, 253 P.3d 700, 706 (2011). The Land Board appears to confuse its assumption as to how the district court will rule if this matter is remanded with the concept of mootness. In this case, the district court rendered two distinct decisions: (1) the first decision denied the Lessees’ claim for breach of contract on the grounds that it was restricted to the APA review standards; and (2) the subsequent decision, in a wholly separate action, analyzed whether the Land Board’s decisions in December and April should be reversed pursuant to the standards of the APA. Assuming that the district court will rule the same way under a different standard of review is not the same thing as mootness.

The differing standards of review applied to a breach of contract claim versus the review of an agency decision is the distinguishing factor as to why the district court’s Decision on Petition for Judicial Review Re Contract Claims has no effect on the present appeal. That is, this matter is not moot because it is not a decision on the same issues and the issue in this case has not been previously decided by the court. *Miles v. Idaho Power Co.*, 116 Idaho 635, 642-43, 778 P.2d 757, 764-65 (1989). The present case asked the court to engage in a contract analysis and whether it was breached, and if so, if any damages exist and in what amount. The petition for judicial review, or administrative analysis, looked specifically at the agency action and whether the agency violated a statute, exceeded its authority, acted on unlawful procedure, or acted

arbitrarily, capriciously, or abused its discretion. Therefore, the Decision on Petition for Judicial Review Re Contract Claims does not render the present appeal moot.

B. The District Court Erred in Holding that the Lessees' Breach of Contract Claim Must be Raised Through a Petition for Judicial Review Under Idaho's Administrative Procedures Act

As previously asserted, “[t]he question of whether an agency’s action is in violation of the terms of an agreement the agency made with another party is not a question of administrative law; it is a classic question of contract law.” *Premier Tech. v. State By & Through Oregon State Lottery*, 901 P.2d 883, 887-88 (Or. Ct. App. 1995). The Lessees are entitled to have their breach of contract claim analyzed on the merits. Therefore, this Court should reverse the district court’s conclusion that the Lessees are restricted to IDAPA judicial review proceedings and remand this matter for further proceedings.

The Land Board suggests that in order to prevail on the Lessees’ breach of contract claim, the Lessees must “establish the [December 2010] action’s *invalidity*.” *Respondent's Brief in Cross Appeal*, p. 15 (emphasis original). Such an assertion ignores the Lessees’ primary argument. *See Opening Brief in Cross-Appeal*, p. 12 (“the Lessees’ contract claims are not concerned with the procedural validity of the Land Board’s December 21 decision, but instead with the result of that decision on the Lessees’ current contractual rights.”) Lessees are not arguing the validity or invalidity of the December action in their breach of contract claim; instead, they assert that such action, the refusal to renew the 2001 lease, constitutes a breach of contract. It very well may be true that the Land Board was acting within its statutory and constitutional framework and did not abuse its discretion through its December action.

However, it may also be true that despite the “appropriateness” of this action, it still constitutes a breach of existing lease obligations. The two theories are not mutually exclusive.

In a recent decision, partially overruling *Hayden Lake Fire Protection Dist.*, this Court found that “a claim for breach of contract arising from the incorporation of Idaho Code § 72-915 in the [State Insurance Fund]’s workers’ compensation insurance policies[.]” grounded in contract, and was governed by that statute of limitations. *Farber v. Idaho State Insurance Fund*, 2012 WL 246679, *2 (January 27, 2012) (“It logically follows that a breach of contract suit, based upon such statutory provisions, is subject to the statute of limitations for contract actions”). The Land Board argues that *Hayden Lake Fire Protection Dist.*, does not permit a “frontal attack on the validity of an ‘agency’ action as a contract breach claim.” However, *Farber* and *Hayden Lake Fire Protection Dist.*, stand firmly for the position that a claim for breach of contract, whether against an agency or not, is governed by the standards of contract law. *See Hayden Lake Fire Protection Dist., v. Alcorn*, 141 Idaho 388, 400, 111 P.3d 73, 85 (2005) (overruled on other grounds) (“IAPA does not apply to this case [regarding the claim for breach of contract]”); *Farber v. Idaho State Insurance Fund*, 2012 WL 246679, *3 (January 27, 2012) (“It is the contract and its breach by the SIF that allow the Plaintiffs and their Class to bring this action[.]”) Therefore, *Hayden Lake Fire Protection Dist.*, is squarely on point: the Lessees’ claim for breach of contract is not restricted to IDAPA judicial review. Therefore, the district court’s erroneous decision must be reversed and this matter should be remanded for proceedings consistent with this opinion.

DATED this 20th day of March, 2012.

FARLEY OBERRECHT WEST HARWOOD
& BURKE, P.A.

By: 

Phillip S. Oberrecht – Of the Firm
Leslie M. Hayes – Of the Firm
Slade D. Sokol – Of the Firm
Attorneys for Defendants-In-Intervention-Respondents
and Cross-Appellants Gladys Babcock, et al., as
Trustee of The Babcock Trust, et al.

CERTIFICATE OF SERVICE

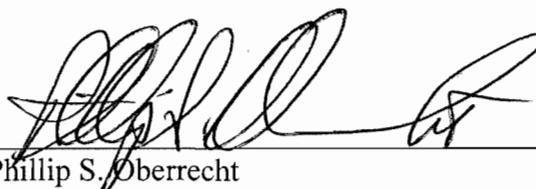
I HEREBY CERTIFY that on the 28th day of March, 2012, I caused to be served two (2) true and correct copies of the foregoing document, by the method indicated below, and addressed to each of the following:

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- Hand Delivered
- Overnight Mail
- Telecopy
- Electronic Transmission



Phillip S. Oberrecht
Leslie M. Hayes
Slade D. Sokol

Exhibit B

ARCHIE N. BANBURY, CLERK
BY [Signature] DEPUTY

JAN 20 2012

Case No. _____ Inst. No. _____
Filed _____ A.M. 4:06 P.M.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

GLADYS BABCOCK, as Trustee of the
BABCOCK TRUST, et al.,

Case No. CV-2011-16C

Petitioners,

MEMORANDUM DECISION RE:
CONTRACT CLAIMS AND CONTEMPT
OF COURT ORDER

vs.

IDAHO BOARD OF LAND
COMMISSIONERS; and TOM SCHULTZ,
in his official capacity as Director of the
Idaho Department of Lands,

Respondent.

APPEARANCES

For the Petitioners: Phillip S. Oberrecht and of Hall Farley Oberrecht &
Blanton, P.A.

For Respondents: Clay Smith, Deputy Idaho Attorney General

COURT PROCEEDINGS

The Idaho State Land Board of Commissioners ("Land Board") entered into lease agreements with Petitioners Babcock, et. al ("Lessees") for cottage sites at Payette Lake for the term January 1, 2001, through December 31, 2010 ("2001 Leases"), which contained a renewal provision within the Leases. These Leases were co-signed and administered by the Land Board.

This proceeding is a consolidated series of cases for judicial review under the

1 Idaho Administrative Procedure Act ("IAPA"), Idaho Code § 67-5201 to 5292, with
2 respect to the Agency actions by Land Board as it pertains to these Leases. Two of the
3 cases, CV-2011-16C and CV-2011-20C, seek review of an action taken by the Land
4 Board at its December 21, 2010 meeting and the other two cases, CV-2011-814C and
5 CV-2011-191C, seek review of actions taken by the Land Board at its April 19, 2011
6 meeting. This Court approved, on September 27, 2011, the parties' stipulation for
7 consolidating the four judicial review proceedings and establishing a procedure for the
8 resolution. Two of the Petitions, CV-2011-16C and CV-2011-191C, challenge the Land
9 Board's December 2010 and April 2011 action on contract-related grounds. The latter
10 Petition also challenges the Land Board's actions on the basis that they violated a
11 Preliminary Injunction issued on December 17, 2010 in the case of *Wasden v. State*
12 *Board of Land Comm'rs*, Ada County Case No. CVOC-2010-23751. The other Petitions
13 for Review, CV-2011-20C and CV-2011-184C, challenge these actions on constitutional
14 and statutory grounds. The stipulation entered into by the parties provided for petitions
15 presented on contract and preliminary injunction grounded claims to be addressed first,
16 and thus this decision is limited to those claims.

18 **The Administrative Proceedings by the Land Board.**

19 These cases all deal with the leasing of State Endowment Lands adjacent to
20 Payette and Priest Lakes, commonly referred to as cottage sites ("cottage sites").
21 There are 168 cottage sites associated with Payette Lake and 354 such sites with Priest
22 Lake. The Petitioners in this proceeding hold leases for lots adjacent to or near Payette
23 Lake. The leases in this petition had a ten (10) year term that expired on December 31,
24 2010. The Land Board, in anticipation of the expiration of the Leases, directed the
25 Idaho Department of Lands Director to prepare a new template lease for its review that
26

1 included a rental rate of 4% of 10-year average value of each lot to be phased in over
2 five years with premium rent set out at 10% of the gross leasehold value or 50% of the
3 net leasehold value, whichever is greater for the Endowment.

4 The Attorney General, as a member of the Land Board, filed a Petition for Writ of
5 Prohibition before the Supreme Court alleging that the rental rate would not secure the
6 maximum long term financial return mandated under Article IX, Section 8 of the Idaho
7 Constitution, and pursuant to Idaho Code § 58-310A.

8 The Supreme Court issued a decision in *Wasden, ex rel. State v. Idaho State*
9 *Board of Land Comm'rs*, 150 Idaho 547, and did not reach the merits of the writ
10 application, instead, dismissing the Petition on the ground that the Attorney General
11 possessed a plain, speedy and adequate remedy in the ordinary course of law through
12 the availability of the declaratory and injunctive relief in an ordinary judicial action.
13

14 After the Supreme Court issued that decision, the Attorney General filed a
15 complaint as set forth above. In that complaint, the Attorney General sought declaratory
16 and injunctive relief against the Land Board and its Director. In that lawsuit, the
17 Attorney General's Office alleged three claims for relief: (1) Idaho Code § 58-310A
18 violates Article IX, Section 8, by authorizing the lease of the cottage sites subject to the
19 statute without compliance with the public auction requirement; (2) the Land Board had
20 violated, over a long period of time, its constitutional duty to "secure the maximum long
21 term financial return" to endowment law beneficiaries by establishing a rental rate
22 pursuant to the authority normally invested in it under Section 58-310A substantially
23 below that which would generate such return; and (3) the Land Board violated Section
24 58-310A's directions to set an appropriate market rent by, *inter alia*, its utilization of
25 phase-in periods for rental increases to mitigate perceived hardships on Lessees.
26

1 During the interim phase of renewing the Leases, the Attorney General filed, with
2 the complaint, a motion that requested a preliminary injunction to enjoin the Director
3 from presenting to the Land Board for its consideration the 2011-2020 leases for the
4 cottage sites or executing such leases if presented. Judge Bail, the presiding judge in
5 the case initially, granted the injunction orally at the preliminary injunction hearing and
6 issued a written order on December 16, 2010. In that order, Judge Bail prohibited the
7 Director from issuing the template lease for the single family recreational cottage and
8 homesite subject to Idaho Code § 58-310A until further order of the court.

9 Judge Bail, through interlineation, also set forth provisions in the injunction order
10 concerning the effect on the then existing leases. Those interlineations are the basis for
11 Payette Lake's Lessees filing a motion for sanctions pursuant to Idaho Rule of Civil
12 Procedure Rule 75 on January 27th contending that the Land Board was precluded by
13 the injunction from altering the 2010 rental rates for the year 2011.
14

15 On December 15th, prior to the injunction hearing, the Priest Lake Defendants
16 requested intervention and their motion was granted at the injunction hearing. The Ada
17 County action was consolidated with a Valley County Case, *Babcock v. Idaho State*
18 *Board of Land Comm'rs*, CV-2010-436C by an order entered March 8, 2011. This Court
19 then was assigned the responsibility of deciding these various cases in light of this
20 Court's assignment as the District Court Judge for Valley County.
21

22 The Land Board, at a meeting on December 21, 2010, convened in part to
23 address the preliminary injunction adopted two motions. The first motion was to grant a
24 one year extension of the existing lease, which included a 2.5% current market value,
25 premium rent provisions, that the leaseholders would have until February 1, 2011 to
26 notify the Director of the acceptance of the lease extension and to make the rental

1 payment for 2011 in accordance with the remaining terms of the existing lease.

2 The second motion, which passed, called for cottage site leases, in 2012, with a
3 rental rate of 4% of current value of the lease premises for a period of 10 years and that
4 premium rent would not be a term and condition of the lease. Both of these motions
5 then negated earlier action taken by the Land Board on March 16, 2010.

6 Subsequent to the Land Board's December 21, 2010 meeting directing the
7 issuance of one year leases, the Lessees were distributed a renewal agreement for the
8 calendar year 2011 that incorporated the 2001-2010 lease terms. The Lessees were
9 instructed to return the signed lease and the first half of the 2011 rent by February 1,
10 2011. This was accomplished initially by letters dated December 22, 2010 concerning
11 the 2011 rent determination. Many of the Lessees submitted reservation of rights letters
12 asserting that they have exercised their right to renew the existing cottage site lease
13 pursuant to the terms of the lease. The Department of Lands received reservations of
14 rights letters with respect to the 2012-2013 leases approved by the Land Board on April
15 19th as well.

17 The Lessees filed judicial review proceedings on January 18, 2011, challenging
18 these actions by the Land Board. Subsequent to the cottage site owners' challenge to
19 these motions, a meeting was conducted on April 19, 2011, by the Land Board. The
20 Department of Lands made a recommendation to the Land Board that a 10 year lease,
21 as previously approved on December 21st, be delayed to approve a two year lease
22 document and to offer the two year lease to the cottage site Lessees with a July 1, 2011
23 response deadline. That motion was approved by the Land Board. The Land Board
24 instructed the Idaho Department of Lands to offer cottage site Lessees the opportunity
25 to renew the 2011 lease for the 2012-2013 period.
26

1 The Lessees filed their Petitions for Review in CV-2011-184C and CV-2011-
2 191C with respect to this action, on May 16, 2011. Finally, the Petitioners sought Rule
3 75 sanctions regarding the preliminary injunction and the Court ruled on May 13, 2011,
4 that the Ada County District Court's interlineations were conflicting but concluded that
5 Judge Bail intended the status quo, whether it was the rates charged for the cottage
6 sites or the amount of rent charged for these cottage sites, would remain at 2010 levels
7 until further ruling on the multiplicity of issues that have been brought before the Court.
8 The motion for contempt was denied and the Court instructed the Land Board that if any
9 payments in excess of the 2010 rents had been collected, that they would be refunded
10 or credited against any further payments on the leasehold estates.
11

12 **ISSUES PRESENTED FOR JUDICIAL REVIEW IN THIS PROCEEDING**

- 13 1. Whether the 2001 cottage site lease provided the Payette Lake Lessees with
14 a right to renew the lease for a ten-year period under the same terms and conditions.
- 15 2. Whether the Preliminary Injunction issued by Judge Bail on December 17,
16 2010, removed the Land Board's authority to take the December 21, 2010 and April 19,
17 2011 agency actions.
18

19 **STANDARD OF REVIEW**

20 Section 67-5279(2), Idaho Code, specifies the scope of review applicable to the
21 Land Board's December 21, 2010 and April 19, 2011 actions. It provides:
22

23 When the agency was not required by the provisions of this chapter
24 or by other provisions of law to base its action exclusively of a record, the
25 court shall affirm the agency action unless the court finds that the action
26 was:

- (a) in violation of constitutional or statutory provision;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

1 If the agency action is not affirmed, it shall be set aside, in whole or in
2 part, and remanded for further proceedings as necessary.

3 DISCUSSION

4 This case involves complex issues for both the Land Board as well as the
5 Lessees of this property. The Land Board is tasked with the constitutional responsibility
6 to maximize the income from these various cottage lots at Payette Lake and Priest
7 Lake. Although this is not impossible as a result of the discipline and methodologies
8 available through accepted appraisal methods, property valuation is still a difficult task.
9 What has contributed to the difficulties facing both parties to this proceeding is that
10 these properties fall squarely within the recreational real estate market. Though many
11 of these Lessees make this property their primary home, the fact of the matter is that
12 many of these homes are secondary homes located in beautiful recreational areas of
13 Idaho. The problem with recreational real estate is that property values in this class of
14 real estate fluctuate significantly in comparison to agricultural, commercial and
15 residential real estate market values.
16

17
18 Complicating this factor even more is that Valley County had tremendous
19 valuation increases to recreational real property starting in the mid-1990s until
20 approximately 2007. A large part of the volatility of the Valley County recreational real
21 estate market was based upon the development of Tamarack, a ski resort, which spiked
22 up property values in Valley County, and now has had an extremely detrimental impact
23 on those same property values since filing bankruptcy. The overall national real estate
24 market in all sectors has impacted recreational real property and brought the values
25 down over the past several years, impacting the Priest lake cottage sites as well.
26

The final complicating factor in this whole equation is that many of these cottage

1 holders have invested years of sweat equity and capital into these properties, placing
2 substantial improvements on these properties. To compare these cottage leases to
3 some of the State agricultural leased property disputes that have come before the
4 Supreme Court is not a fair comparison.

5 **THE LAW APPLICIBLE TO THE LEASHOLDS**

6 Article IX, Section 7, of the Idaho Constitution provides that the Land Board shall
7 have direction, control and disposition of the public lands of the State under such
8 regulations as may be prescribed by law. Article IX, Section 8 further states that the
9 Land Board shall provide for the sale or rental of endowment lands "under such
10 regulations as may be prescribed by law in such manner as will secure the maximum
11 long term financial return."
12

13 Idaho Code § 58-307 requires that all applications to lease or renew an existing
14 lease which expires December 31st of any year shall be filed in the office of the Director
15 of the Department of Lands by the April 13th preceding the date of such expiration. In
16 addition, that statute imposes limits on various classes of leases with a maximum 35
17 year limit placed on endowment land leases for the cottage site parcels. Idaho Code §
18 58-310 sets forth that if there are competing applications for a lease, then there is a
19 conflict auction process.
20

21 In 1990, the Idaho legislature exempted cottage leases from the conflict auction
22 process. The exception was to give existing lessees the opportunity to make application
23 for a new lease as proposed by the Land Board. That legislation went on to direct the
24 Land Board lease each of these lease lots at market rent throughout the duration of the
25 lease. In response to that legislation, the Department of Lands issued IDAPA rules
26 applicable to cottage site leasing. Those rules were consistent with the statutory

1 provisions and allowed for annual rent to be set by the Land Board as deemed
2 necessary.

3 DECISION

4 The 2001-2010 cottage site leases contained several provisions pertaining to the
5 renewal of the leases. The leases unambiguously set forth that the lease was to
6 commence January 1, 2001 and terminate December 31, 2010 unless terminated
7 earlier as provided in the lease. Contained within that lease was an attachment that set
8 forth subsection (C) entitled Lease Term/Renewal, and under § 1.1, the lease contained
9 the following language: "The term of this lease shall be for no more than 10 years
10 pursuant to Idaho Code § 58-307(1) and for the period of years as set forth in the
11 attached cover lease. Renewals of this lease may be granted by the lessor as
12 determined by the lessor, at the lessor's discretion pursuant to Idaho Code § 58-310A."

14 The terms of the lease went on to calculate the basis for the lease at 2.5% of the
15 current fee simple value of the lease premises as determined by valuations
16 administered by the lessor or by valuation as determined by the assessor. As noted in
17 subsection (D)(1)(4), the Land Board retained the authority to increase or decrease the
18 rent effective on January 1st of any calendar year in accordance with the rate formula
19 set forth herein and provided the lessee an opportunity to be notified in writing 180 days
20 in advance of any increase in rental.

22 Subsection K of the lease sets forth that should the lessee apply to renew this
23 lease in the manner provided by law and such application be denied, then the lessor
24 shall purchase the approved improvements placed or caused to be placed on the
25 leased premises by the lessee at fair market value of such improvements as of the
26 effective date of expiration. Fair market value of the lessee improvements shall be

1 established by appraisal. A request for renewal by the lessee shall not be unreasonably
2 withheld. However it is important to note that Section (K) 1.4 is entitled Treatment of
3 Improvements Upon Lease Termination, Cancellation or Abandonment. All of the
4 paragraphs contained within subsection (K) are consistent with the heading that this
5 language applies to the treatment of improvements upon lease termination, cancellation
6 or abandonment. The Court concurs with the Respondents in that neither Section (K)
7 generally nor does Section 1.4 have as its underlying purpose the determination the
8 parties' lease renewal rights. The Court will find that subsection C.1.1 is the governing
9 provision regarding the renewal of these leases. The agreements called for these
10 leases to be construed in accordance with laws governed by the State of Idaho and in
11 addition, as is obvious from the lease, the leases are subject to current and
12 subsequently enacted statutes applicable to state endowment lands.
13

14
15 **The Lease renewal provisions set forth in the lease agreements as well as**
16 **pursuant to Idaho Code § 58-310A unambiguously grant the Land Board**
17 **the discretion to renew the leases.**

18 The 2001 lease agreements set forth a contractual relationship between the Land
19 Board and the Payette Lake Lessees and thus are subject to the ordinary rules of
20 contract interpretation. The Idaho Supreme Court in *Shawver v. Huckleberry Estates,*
21 *LLC*, 140 Idaho 354, 93 P.3d 685 (2004) set forth that:

22 When the language of the contract is clear and unambiguous, its
23 interpretation and legal effect are questions of law. An unambiguous
24 contract will be given its plain meaning. The purpose of interpreting a
25 contract is to determine the intent of the contracting parties at the time the
26 contract was entered. In determining the intent of the parties, this Court
must view the contract as a whole. If a contract is found ambiguous, its
interpretation is a question of fact. Whether a contract is ambiguous is a
question of law. Whether the facts establish a violation of the contract is a
question of law reviewed *de novo*.

140 Idaho at 361, 93 P.3d at 692.

1 Regarding the lease term/renewal as set forth earlier, Section C is the governing
2 provision pertaining to the renewal of these leases. The language is clear and
3 unambiguous that the lease is for no more than ten years as set forth in Idaho Code §
4 58-307. Because the Land Board is directed, pursuant to the Constitution, to obtain
5 "market rent", the Land Board must have, as a matter of constitutional necessity, the
6 ability to alter the rental rate in establishing the renewal of leases from the rate that
7 existed under the prior lease. Idaho Code § 58-307 anticipates the need for the
8 exercise of the Land Board's discretion in this regard through the market rent
9 requirement. The authority cited by the Respondents in their brief is well taken and
10 clearly sets forth the responsibilities of the Land Board in regard to lease renewal. As
11 set forth earlier, Section K does not contravene or apply to the express language of
12 Section C. Subsection K pertains to improvements and governing provisions as far as
13 improvements are concerned.

14 Thus, the Court will conclude that the Land Board retains the duty and lawful
15 authority to set the terms and conditions of cottage site leases consistent with the
16 constraints imposed by Article IX, Section 8 and, for the present purposes, Idaho Code
17 § 58-310A.

18 **The Idaho Land Board's December 2010 and April 2011 actions did not**
19 **violate the Preliminary Injunction as issued on December 17, 2010.**

20 The Lessees contend that "[t]his Court previously held, in its Memorandum
21 Decision and Order In Re Contempt issued May 13, 2011 in Valley County case
22 Number CV 2011-436C [*sic*] that the Land Board's actions of just increasing the rent to
23 be charged in 2011 violated the Order."

24 The Court, after summarizing the parties' respective positions and discussing the
25 meaning of the term "willful" in the context of a motion under I.R.C.P. 75, stated that it
26 "will find there is not a basis for the Court to find either George Bacon or the Land Board

1 in contempt of Judge Bail's Injunction Order of December 17, 2010." It deemed Judge
2 Bail's preliminary injunction to have "conflicting provisions" and later explained:

3
4 The Court, in construing the totality of the Order, will find that Judge Bail
5 intended that the status quo, whether it was the rates charged for these
6 cottage sites or the amount of rent charged for these cottage sites would
7 remain at the 2010 levels until further ruling by the Court on the multiplicity
8 of issues that have been brought before the Court. However, as the Court
9 indicated earlier, there certainly is some level of ambiguity in the Order
10 and the Board was not in willful violation of the Injunction Order based
upon the fact that the Order did not specifically address altering or
changing the lease rates based upon market value data obtained from the
Idaho Department of Lands. Further, procedurally under I.R.C.P. Rule 75,
the Court was not in a position to find that George Bacon or the Land
Board were in contempt of court.

11 The Court then will instruct, as part of the Injunction, that the Land Board,
12 specifically George Bacon, collect only the rental rates that were in place
13 as of 2010. Any funds received in excess of those will either be refunded
back to the respective lessees or will serve as a credit against any future
installment payments on the lease for the year 2011.

14 *Id.* at 6-7. This Court determined that the Land Board had not violated the preliminary
15 injunction and that Judge Bail had intended to freeze cottage-site lease rates at 2010
16 levels. It therefore "instruct[ed], as part of the Injunction," the IDL Director to collect
17 rents at the 2010 levels and to refund any overages. The injunction, as clarified by this
18 Court, dissolved upon entry of judgment in the consolidated *Babcock* and *Wasden*
19 proceedings and no longer precludes the Land Board from giving effect to the agency
20 actions challenged here.

21
22 At the time the Land Board took the December 2010 and April 2011 actions, its
23 duty to adopt rental rates consistent with the mandates in Article IX, Section 8 and § 58-
24 310A was not unambiguously constrained by the preliminary injunction. The Order
25 instead expressly provided that it was "not intended . . . to affect the Land Board's
26 otherwise lawful authority to take actions related to management of the cottage site

1 endowment lands, including but not limited to the renewal of prior leases as set to
2 expire on December 31, 2010 or the execution of the new leases as determined by the
3 Land Board."

4 Consequently, the preliminary injunctions, as construed and clarified almost a
5 month after the April, 2011 agency action, did not constrain the Land Board from
6 adopting the 2011 and 2012-2013 lease templates. The injunction temporarily
7 suspended operation of the 2011 lease rental rates; it did not provide a basis for
8 invalidating either of the agency actions at issue here. Any other conclusion would
9 create significant separation-of-powers concerns in light of the Board's constitutional
10 and statutory responsibility to administer the leasing of endowment lands and otherwise
11 run afoul of settled principles of equitable relief; *i.e.*, the injunction, both as issued and
12 following the Contempt Decision, must be interpreted and applied to achieve only its
13 specific purpose of preventing rental amounts in excess of those paid in 2010 from
14 being assessed during its pendency. *Cf. Hect Co. v. Bowles*, 321 U.S. 321, 329(1944)
15 ("[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity
16 and to mold each decree to the necessities of the particular case"); *Zepeda v. United*
17 *States Immigration and Naturalization Serv.*, 753 F.2d 719, 728N.1 (9th Cir 1984)
18 ("injunctive relief should be narrowly tailored to remedy the specific harms shown by
19 plaintiffs, rather than to "enjoin all possible breaches of the law") (internal quotations
20 omitted). The injunction's automatic *vacatur* upon entry of the judgment in the
21 consolidated *Babcock-Wasden* litigation mooted any relevance to the *subsequent*
22 implementation of the two actions. The Lessees can show no prejudice from the Land
23 Board's actions—since nothing would preclude the Board from simply ratifying them
24 and, therefore, fail to establish the requisite injury to their substantial rights as required
25
26

1 under I.C. §.67-5279(4).

2 **CONCLUSION**

3 The petitions for review in Valley County Case Nos. CV 2011-16C and CV 2011-
4 191C are denied.

5 DATED this 10 day of January 2012.



7 _____
8 MICHAEL McLAUGHLIN
9 DISTRICT JUDGE

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CERTIFICATE OF MAILING

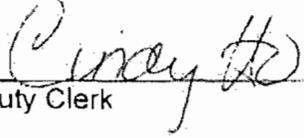
1
2 I hereby certify that on the 30 day of January 2012, I mailed (served) a true
3 and correct copy of the within instrument to:

4 VALLEY COUNTY COURT
5 VIA EMAIL

6 Clay R. Smith
7 IDAHO ATTORNEY GENERAL'S OFFICE
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9 PO Box 83720
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12 702 W Idaho, Ste 700
13 PO Box 1271
Boise, ID 83701
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14
15 ARCHIE N. BANBURY
16 Clerk of the District Court

17 By: 
18 Deputy Clerk