

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

2014 JUN 27 P 3:30

CLERK DISTRICT COURT

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DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

JEAN T. ADAMS, MICHAEL)	
ALTRINGER, DOUGLAS G. & HELEN G.)	CASE NO. CV 2014 - 0000737
AMSBURY, GARY & GLENDA)	
BAKKEN, VERNA E. BANKS, WILLIAM)	
M. & BARBARA T. BATES, JAMES W. &)	MEMORANDUM DECISION AND
GAY L. BECH, JEFFERY E.)	ORDER DENYING PLAINTIFFS'
BLACKWELL, TERENCE R. & MOLLY)	MOTION FOR PRELIMINARY
K. BROMLEY, LARRY M. & JANICE E.)	INJUNCTION
BROWN, TRAVIS H. & DORI BROWN,)	
CLIFFORD D. BERGERON, LEES J.)	
BURROWS, JAMES & DRUANNE)	
CHAPADOS, ANDREW J. & SUSAN P.)	
CHRISTOFF, THOMAS L. & SANDRA)	
CLEVENGER, BRADLEY COSSETTE,)	
MARGO COSTA, ROBERT L. DELSMAN,)	
RICHARD L. DENO, TRAVIS DIX,)	
WILLIAM S. & CAROL ELLIS, JOHN P. &)	
GINA M. EMINGER, ERIC R. & K.)	
CHRISTINE FEHR, MARK & MICHELE)	
FINLEY, MICHAEL GENOVA,)	
RAYMOND & JEANNE GIVENS, JAMES)	
& JENIFER GUNN, EDWIN HANFORD,)	
THOMAS R. & CLAUDIA E.)	
HARTANOV, ANN E. &)	
JAMES K. HEIDENREICH, CURTIS R. &)	
ERIKA HENNINGS, TERESA M. HOLUM,)	
GRAHAM & KERRY HUTCHINSON,)	
RONALD H. & KAREN L. JENSEN,)	
ROBIN JOHNSON, G. CRAIG & SHARON)	
A. LEE, DOROTHY LEEDS, RUSSELL &)	
KATHY MAGER, MARIE A. MARTELL)	
AS TRUSTEE OF THE MARTELL)	
FAMILY TRUST, ROBERT & TESSA)	
MCCRAY, JOY MCKENNA, ROBERT E.)	
& SUSAN M. MOE, LAVERNE &)	
BERNICE MOORE, EDWARD A. &)	
NANCY I. NARANJO, JAMES L. &)	

BRIDGETT A. NEAL, MAURICE &)
 KIMBERLY NOLLETTE, JAMES C. &)
 SYLVIA S. O'NEILL, LYLE W.)
 OLMSTEAD, DOUG PARKER, LYNDA)
 PETERSON, MITCHELL D. PIERCE,)
 ROBERT H. POOLE , MICHAEL J. &)
 JUDY A. REILLY, WILLIAM J.)
 ROBERTS, RICHARD N. & SHEILA B.)
 RUCKER, MATTHEW C. & AMY)
 RUDOLF, DAVID J. & THERESE)
 SCHMARR, GEORGE E. SCHNUG,)
 ROBERT SCOTT, VICKI L. SIMMONS,)
 JAMES & PATRICIA SKIFFINGTON,)
 LAURIE LYCAN SKIPPER, VALERIE)
 SONDEREN, MATTHEW J. & BECKY E.)
 SPILKER, MICHAEL R. & SUSAN K.)
 SPILKER, TIMOTHY & MOLLY E.)
 SPILKER, JOHN & MARILYN)
 STAEHELI, DAVID & JOAN)
 STAUFFACHER, LINDA J. STERN,)
 VIOLA STERN AS TRUSTEE OF THE)
 STERN FAMILY TRUST, STEVEN W.)
 & LINDA SWARTLEY, FRANK TEN)
 THY AS TRUSTEE OF THE PRIEST)
 LAKE LOT H REVOCABLE TRUST,)
 DAVID & JANICE TEWEL, THOMAS V.)
 & KATHLEEN M. TROTTER, FRANK E.&)
 JANE D. WAGSTAFF, JAMES &)
 JACQUELINE WELSH, BRION G. WISE,)
)
 PLAINTIFFS,)
)
 vs.)
 THE STATE OF IDAHO and)
 THE IDAHO STATE BOARD OF LAND)
 COMMISSIONERS, THE IDAHO)
 DEPARTMENT OF LANDS, AND C. L.)
 "BUTCH" OTTER, BEN YSURSA,)
 LAWRENCE WASDEN, TOM LUNA,)
 BRANDON WOOLF and THOMAS)
 SCHULTZ, each individually)
)
 DEFENDANTS,)
)
)
)

THIS MATTER came before the court on June 24, 2014, for a hearing on Plaintiffs' Motion for Preliminary Injunction pursuant to Idaho Rule of Civil Procedure 65(e)(1)(2) and (3), filed on June 10, 2014. The plaintiffs were represented by Raymond C. Givens, of GIVENS LAW FIRM, and Gary Finney and Rex Finney, of FINNEY FINNEY & FINNEY, P.A. Raymond Givens argued for the plaintiffs. The defendants were represented by Steven W. Strack, Deputy Attorney General, Natural Resources Division, Office of the Attorney General.

I. INTRODUCTION

This is an action concerning residential leases on State endowment lands. The Idaho State Board of Land Commissioners ("Land Board" or "Board")—composed of the Governor, the Secretary of State, the State Controller, the Attorney General, and the Superintendent of Public Instruction—are the trustees of approximately 2.5 million acres of land the United States granted in trust to the State of Idaho to support public schools and certain other public institutions. This endowment trust land includes 354 recreational lake lots on Priest Lake in northern Idaho and 168 recreational lake lots on Payette Lake in central Idaho, commonly known as "cottage sites." The plaintiffs are a group of approximately seventy-five Priest Lake cottage site lessees.

In February 2014, the Land Board accepted newly appraised values established by appraisal company Hall-Widdoss on 342 of the Priest Lake cottage sites for the purpose of setting prospective annual lease amounts and establishing minimum bids at forthcoming auction sales. The plaintiffs seek a preliminary injunction enjoining the Land Board from using the Hall-Widdoss appraisals to (1) set current or future lease payments; (2) to set minimum bids for any sale of the cottage sites; or (3) to establish the value of the plaintiffs' improvements to the cottage sites.

II. STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Pursuant to the Idaho Constitution, it is the Land Board's duty to provide for the sale or rental of the endowment trust lands in a manner that will secure the maximum long term financial return to Idaho's public schools and institutions. Idaho Const. art IX, § 8. Endowment land can only be sold at public auction and may not be sold at less than its appraised value. *Id.* The specific provisions for the appraisal, lease and sale of the endowment lands are set forth in Idaho Code Title 58, Chapter 3, Appraisal, Lease and Sale of Lands.

The Priest Lake cottage sites were originally undeveloped lake shore. For several decades, the Land Board leased the cottage sites for ten-year terms at extremely low annual rentals with the requirement that the lessees maintain or make "substantial improvements" to their lots. *See Affidavit of Kaari Burrows Davies* (filed June 11, 2014), Exh. 2. (By way of illustration, the exhibits filed by the plaintiffs show an annual rental for Lot 172 in Lot 3 of \$35 from 1959-1968; an annual rental for Lot 276 in Lot 1 of \$96 from 1969-1978; and an annual rental for that same lot of \$395 from 1979-1988. *Id.*; *Second Affidavit of Robert L. Delsman* (filed June 11, 2014), Exh. P-Q.

Prior to 1990, Idaho law required that all expiring cottage site leases be offered for lease to the public at large. When two or more persons applied to lease the same land, the Department of Lands was required to hold a "conflict auction" and award the new lease to the highest bidder. Idaho Code § 58-310. In 1990, the Idaho Legislature enacted Idaho Code § 58-310A. That statute specifically exempted cottage sites from the conflict auction requirement. Idaho Code § 58-310A(2). The plaintiffs allege that after the 1990 statutory change, many cottage site lessees improved their existing cabins or constructed new cabins on their leaseholds in reliance on the

implied right of continuation of their leases created under Idaho Code § 58-310A. *Plaintiff's Brief Supporting Motion for Preliminary Injunction* (filed June 10, 2014), at p. 1.

In 2007, the Land Board initiated proceedings to set a new rental rate for cottage site leases. *Wasden v. State Bd. of Land Com'rs*, 153 Idaho 190, 192, 280 P.3d 693, 695 (2012). The Board voted to raise the annual lease rental from 2.5% of the ten-year average value of the land to 4% of the ten-year average land value. *Id.*

In October of 2010, a group of Payette Lake cottage site lessees sued the Land Board contending that they had a contractual right to renew their leases for another ten years on terms identical to those of their expiring leases. *Id.* In December of 2010, the Attorney General filed a second lawsuit seeking to enjoin the Land Board from implementing the new lease rate and challenging the constitutionality of Idaho Code § 58-310A (the statute exempting cottage sites from conflict auctions). *Id.* At its December 21, 2010 meeting, the Land Board voted to extend and renew the existing cottage site leases for one year, through December 31, 2011, under their existing terms and conditions at the 2.5% rate while awaiting rulings on the pending litigation. *Second Affidavit of Robert L. Delsman, Exh. A.*

In 2011, the Land Board approved the implementation of the Cottage Site Plan with the ultimate objective of getting the Land Board out of the cottage site leasing business. *Second Affidavit of Robert L. Delsman, Exh. C.* The Plan contemplated unifying the cottage site land with its improvements and selling the unified estate through a voluntary auction or exchanging the unified estate for other land through a voluntary land exchange. Lots that were not able to be voluntarily sold or exchanged would continue to be leased pending further review. *Id.* The Land Board issued two-year leases for 2012 and 2013 while it continued to await a decision on the

pending litigation. *Second Affidavit of Robert L. Delsman*, Exh. B. The two-year leases incorporated the 2010 appraised land value and the increased 4% rate.

In 2012, the Idaho Supreme Court released the *Wasden* decision holding that public auctions are constitutionally required in the leasing of endowment lands and declaring Idaho Code § 58-310A unconstitutional. *Wasden*, 153 Idaho at 198, 280 P.3d at 701.¹ Also in 2012, the Land Board ordered new appraisals of all cottage sites in anticipation of moving forward with the Cottage Site Plan. *Second Affidavit of Robert L. Delsman*, Exh. D. The 2012-13 Priest Lake appraisals were conducted by four separate appraisers working independently. While the appraised values for the cottage site land at Payette Lake did not increase between the 2010 and 2012 appraisals, the appraised values for the Priest Lake lots increased, on average, more than 80%. *Affidavit of Mike Murphy* (filed June 19, 2014), Exh. 2.

Not surprisingly, many of the Priest Lake cottage site lessees vociferously objected to the 2012-13 appraisals. A number of lawsuits were filed in this court. Some of the current plaintiffs were parties to those lawsuits. Officials with the Department of Lands began meeting with the lessees' legal counsel and Association in an attempt to address the lessees concerns and resolve the lawsuits. *Id.*

At the May 21, 2013 Land Board Regular Meeting, the Directors of the Department of Lands presented the Board with the "2014 Cottage Site Appraisal Process" for the Priest Lake cottage sites. *Affidavit of Mike Murphy*, Exh. 1 and Attachment 1. The Deputy Director testified that the Process document had been drafted after several weeks of meetings with legal counsel for the lessees. *Id.*, Exh. 2. The Land Board heard testimony from attorney Scott Miller

¹ While the Idaho Supreme Court did not rule on the merits of the Payette Lake lessees' contract action (holding that the district court had erred in requiring the lessees to exhaust their administrative remedies before pursuing a declaratory judgment action), the Court opined that the lessees faced a "daunting task" in light of the Land Board's constitutional duty to secure the maximum financial return on leases and sales of endowment lands. *Id.* at 199, 280 P.3d at 702.

representing 24 of the Priest Lake lessees, attorney Chuck Lempesis representing the Priest Lake State Lessees' Association and Denny Christenson, the President of the Priest Lake State Lessees' Association. All three spoke in favor of the negotiated resolution. *Id.* At the conclusion of the meeting, the Land Board voted to approve the 2014 Cottage Site Appraisal Process. *Id.*, Exh. 1.

The 2014 Cottage Site Appraisal Process (hereafter, "2014 Appraisal Process") provides for a single appraiser to establish land and improvement values for all the Priest Lake cottage sites. If a lessee challenges the new appraisal, the State will hire a second appraiser from an approved list, at the lessee's expense, to reappraise the property. If the difference between the first and second appraisal is less than 10%, the difference will be split to arrive at a final value. If the difference is greater than 10%, the matter is referred to a third approved appraiser who will adopt one of the appraised values or split the difference between the two values. *Id.*

After the Board adopted the 2014 Appraisal Process, the lessees did not pursue their pending lawsuits and they were administratively dismissed. The Department of Lands hired Hall-Widdoss & Company, P.C., a real property valuation and consulting company out of Missoula, Montana, to reappraise the Priest Lake cottage sites. The Land Board held a Special Meeting on November 12, 2013, and voted to extend the two-year Priest Lake cottage sites leases, which were slated to expire on December 31, 2013, for one year at the same annual lease rate. *Second Affidavit of Robert L. Delsman*, Exh. H.

The Hall-Widdoss appraisals ("H-W appraisals") were completed in January of 2014. The Land Board approved them, subject to correction of factual errors by the appraiser, at a Special Meeting on February 26, 2014. *Id.*, Exh. J; *see also Affidavit of Kaari Burrows Davies*,

Exh. 37. The H-W appraisals, like the disputed 2012 appraisals, appraised the cottage site land at much higher values than the 2010 appraisals.

On February 20, 2014, representatives of the Land Board sent the lessees a copy of the H-W appraisal for their lot, an application for a new lease beginning in 2015, and a flow chart which set for the procedure to challenge the new appraisal. Lessees were given until April 30, 2014, to submit an application for a new lease. *Affidavit of Kaari Burrows Davies*, Exh. 21. Those lessees whose lots had been approved for inclusion in a Voluntary Auction for Sale (“VAFO”) were also sent an application to participate in the VAFO. Inclusion in the VAFO was conditioned on the lessee accepting the 2014 land value, as determined by the H-W appraisal. *Second Affidavit of Robert L. Delsman*, Exh. L.

On February 27, 2014, representatives of the Land Board sent all lessees a letter offering them the opportunity to identify and request correction of factual errors in the appraisals. *Id.*, Exh. M. The plaintiffs contend that a total of 126 factual error corrections were submitted and that only one was accepted. *Plaintiff's Brief Supporting Motion for Summary Judgment* (filed June 10, 2014), at p. 12.

On April 28, 2014, the plaintiffs instituted the present action with the filing of a “Verified Complaint for Damages, Injunctive, Equitable and Declaratory Relief, a Temporary Restraining Order and a Preliminary Injunction.” The matter was first before the court on April 29, 2014, for an expedited hearing on the plaintiffs’ application for a temporary restraining order suspending the April 30, 2014 deadline for submitting cottage site lease applications. The court denied the application on the record.

The plaintiffs filed their Verified Amended Complaint for Injunctive (Preliminary and Permanent) and Declaratory Relief on May 30, 2014. As stated above, the matter came before the court for hearing on Plaintiff's Motion for Preliminary Injunction on June 24, 2014.

III. LEGAL STANDARD

Idaho Rule of Civil Procedure 65(e) provides:

(e) Grounds for Preliminary Injunction. A preliminary injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When it appears, by affidavit, that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of the defendant's property with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition.

(5) A preliminary injunction may also be granted on the motion of the defendant upon filing a counterclaim, praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

(6) The district courts, in addition to the powers already possessed, shall have power to issue writs of injunction for affirmative relief having the force and effect of a writ of restitution, restoring any person or persons to the possession of any real property from the actual possession of which the person or persons may be ousted by force, or violence, or fraud, or stealth, or any combination thereof, or from which the person or persons are kept out of possession by threats whenever such possession was taken from them by entry of the adverse party on Sunday or a legal holiday, or in the nighttime, or while the party in possession was temporarily absent therefrom. The granting of such writ shall extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions the same as though no such writ had issued: provided, that no such writ

shall issue except upon notice in writing to the adverse party of at least five (5) days of the time and place of making application therefor.

I.R.C.P. 65(a)-(e).

In *Brady v. City of Homedale*, 130 Idaho 569, 944 P.2d 704 (1997), the Idaho Supreme

Court stated:

Whether to grant or deny a preliminary injunction is a matter for the discretion of the trial court. *Harris v. Cassia County*, 106 Idaho 513, 517, 681 P.2d 988, 992 (1984). An appellate court will not interfere with the trial court's decision absent a manifest abuse of discretion. *Id.* A preliminary injunction "is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal." *Id.* at 518, 681 P.2d at 993 (citing *Evans v. District Court of the Fifth Judicial Dist.*, 47 Idaho 267, 270, 275 P. 99, 100 (1929)).

In determining whether a trial court has committed a manifest abuse of discretion, the reviewing appellate court "must determine (1) whether the trial court correctly perceived the issue of one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion, consistently with applicable legal standards; and (3) whether the trial court reached its decision by exercise of reason." *Lankford v. Nicholson Mfg. Co.*, 126 Idaho 187, 188-89, 879 P.2d 1120, 1121-22 (1994). Furthermore, an appellant bears the burden of showing an abuse of the trial court's discretion. *Southern Idaho Prod. Credit Ass'n v. Astorquia*, 113 Idaho 526, 528, 746 P.2d 985, 987 (1987).

... An injunction cannot restrain an act already completed. *Wilson v. Boise City*, 7 Idaho 69, 73, 60 P. 84, 85 (1900) ("That act already taken place, a writ of injunction could not prevent it."). The district judge acted within the bounds of his discretion and his opinion evidences sound reason. The district judge did not err in denying the preliminary injunction.

Id. at 572-573, 944 P.2d at 707-708. (Emphasis supplied).

IV. DISCUSSION

The plaintiffs are before the court seeking injunctive relief to prevent the defendants from using the H-W appraisals to set new cottage site lease payment amounts, to set VAFO minimum bids, or to set the value of the plaintiffs' improvements. The plaintiffs allege that they have a cause of action under 42 U.S.C. § 1983 "against the individual Defendants who have acted under color of state law and deprived Plaintiffs of their right to due process guaranteed by the 14th

Amendment to the United States Constitution regarding the valuation of their cottage site to set future rents and to sell the land.” *Plaintiff’s Brief Supporting Motion for Preliminary Injunction*, at p. 23. Section 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

A Section 1983 claim based on a deprivation of due process has three elements: (1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; and (3) a lack of process. *Portman v. Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). The failure to establish any one of the three elements is fatal to the claim. *Bank of Jackson County v. Cherry*, 980 F.2d 1354, 1357 (11th Cir. 1992).

The Due Process Clause does not create substantive rights in property; the property rights are defined by reference to state law. *Portman*, 995 F.2d at 904. As defendants state in their Memorandum, “[t]he threshold inquiry in any § 1983 claims [sic] is whether the Plaintiffs’ asserted property right has any basis in state law.” *Memorandum in Opposition to Motion for Summary Judgment* (filed June 19, 2014), at p. 6.

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. ... Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem

from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

The plaintiffs assert that they have a constitutionally protected property right to renew their cottage sites leases—in essence a property right in the next lease. They are before the court seeking extraordinary relief—asking this court to enjoin the actions of the Land Board in carrying out its constitutional and statutory duties to protect, sell and lease the state endowment lands. As noted above, a preliminary injunction “is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal.” *Harris v. Cassia County*, 106 Idaho at 518, 681 P.2d at 993. On the record before it, this court does not find that the plaintiffs have established that they hold any state law property right to renew their leases.

Under Idaho law, leases of endowment land are for a fixed term of years. Idaho Code § 58-307. Any person who uses or occupies state land for more than thirty days after expiration of a lease is regarded as a trespasser and subject to criminal penalties. Idaho Code § 58-312. In this court’s view, the Idaho Supreme Court’s recent decision in *Wasden* makes it very clear that the Idaho Constitution prohibits recognition of any property right in a lease of state endowment land—the very relief the plaintiffs are seeking.

The Idaho Constitution specifies the Board's duties in managing State endowment lands. Article IX, § 8, expressly states that endowment lands must be held in trust to secure the maximum long term financial return, subject to “disposal” at public auction:

It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the [endowment] lands ... 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.... 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....

Idaho Const. art. IX, § 8. ...

Reading “disposal,” in Article IX, § 8, to include both leases and sales of land is consistent with the Court's earlier decisions and the context of the word. The Court has recognized that “[t]he Board does not have the discretion to grant a lease to an applicant who does not place a bid at an auction, based upon Idaho's constitutional and statutory mandate that the Board conduct an auction. Idaho Const. art. IX, § 8; I.C. § 58–310.” *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 128 Idaho 761, 766, 918 P.2d 1206, 1211 (1996) (*IWP 1*). In *IWP 1*, the Court did not explicitly state that Article IX, § 8 is the only basis for the auction requirement, but it implied that the Constitution is one mandatory basis for auctions, while statutory provisions are another. *Id.* This conclusion follows *East Side Blaine Cnty. Livestock Ass'n v. State Bd. of Land Comm'rs*, where the Court explained that

[t]he dominant purpose of [Idaho Const. art. IX, §§ 7, 8] and of the statutes enacted thereunder is that the state shall receive the greatest possible amount for the lease of school lands for the benefit of the school funds, and for this reason competitive bidding is made mandatory.

34 Idaho 807, 814, 198 P. 760, 763 (1921) (emphasis added).

Wasden v. State Bd. of Land Com'rs, 153 Idaho at 196-97, 693 P.2d at 699-700.

The Idaho Supreme Court's discussion of the Payette Lake lessees' claims that they had acquired a contractual right to renew their 2001 leases for an additional ten years on the same terms and conditions is instructive:

Although we do not rule on the merits of the contract action, it must be observed that the Payette Lake Lessees face a daunting task in establishing that they have an unconditional right to renew their 2001 leases for a ten-year period on the same terms and conditions, including the 2.5% rental rate. They will also need to convince the district court that the provisions of the 2001 leases, which were drafted to comport with I.C. § 58–310A, are still valid despite this Court's holding that the statute is unconstitutional. Even if they are able to do that, the Board has a constitutional obligation to “secure the maximum long term financial return” on leases and sales of endowment lands. Idaho Const. art. IX, § 8. The Board has determined that, at a minimum, an annual rent of 4% of the fee-simple value of the property constitutes market rent, i.e., the rent required for maximum financial return. The Payette Lake Lessees will need to convince the district court

that the 2.5% rental rate constitutes market rent and that the Board erred in determining it to be 4%. If they are unsuccessful in this regard, they will have the unenviable task of trying to convince the court to force the adoption of an unconstitutional rental rate. And, of course, they will need to convince the district court that its seemingly reasonable interpretation of the lease language in the administrative proceeding was incorrect.


Id. at 199-200, 280 P.3d at 702-703.

V. CONCLUSION AND ORDER

NOW, THEREFORE, this court holds that the plaintiffs' 42 U.S.C. § 1983 claim fails due to their failure to establish any property interest protected by the Constitution. As the plaintiffs have failed to establish a clear right to their requested relief, IT IS HEREBY ORDERED THAT the motion for a preliminary injunction is denied.

IT IS SO ORDERED.

DATED this 27 day of June, 2014.



Barbara Buchanan
District Judge

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was delivered via facsimile transmission, this 27th day of June, 2014, to:

David H. Leroy
Attorney At Law
1130 East State Street
Boise, Idaho 83712
VIA FACSIMILE: 208-342-4200

Gary A. Finney
Finney Finney & Finney, P.A.
Attorneys at Law
Old Power House Building
120 E. Lake Street, Suite 317
Sandpoint, Idaho 83864
VIA FACSIMILE: 208-263-8211

Raymond C. Givens
GIVENS LAW FIRM
302 Third Avenue South
Kirkland, Washington 98033
VIA FACSIMILE: (425) 614-0158

Steven Strack
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
VIA FACSIMILE: 208-854-8072


Deputy Clerk