

IN THE SENATE

SENATE BILL NO. 1243

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO GRAZING; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 3, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-303, IDAHO CODE, TO PROVIDE FOR CERTAIN GRAZING PERMITS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to clarify by statute that lands acquired from the federal government subsequent to statehood are not general grants of land made by Congress to the state and are therefore not subject to the constitutional requirement to be disposed of at public auction. It is further the intent of the Legislature to ensure that preexisting private rights are not extinguished subsequent to a land exchange with the federal government.

In the 2012 Idaho Supreme Court case of *Wasden v. State Board of Land Commissioners*, 153 Idaho 190, 280 P.3d 693, a unanimous court held that "the Court applies the rules of statutory construction to construe constitutional provisions. The Court will give effect to the plain language of an unambiguous statutory or constitutional provision. It reviews the provision's language as a whole, considering the meaning of each word, so as not to render any word superfluous or redundant."

Section 8, Article IX of the Idaho Constitution specifies duties in managing state endowment lands. It states in part: "The legislature shall... 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".

This provision of the Idaho Constitution distinguishes between the more narrow category of "general grants of land made by congress" and the broader term "all state lands." The original general grants of land made by Congress were received with no encumbrances upon the land. However, since the ratification of the Idaho Constitution, there have been infrequent instances when land has been acquired from the federal government in an exchange of state lands for federal lands. Often, these newly acquired lands have preexisting encumbrances, granted and recognized by Congress, which constitute property rights belonging to the citizens of Idaho that are protected under Sections 1, 14, and 21, Article I of the Idaho Constitution.

Further, each parcel exchanged is intricately described and is in no way a general grant such as the original grant of sections 16 and 36 in each township. These newly acquired lands are exchanged on an appraised dollar-for-dollar basis. They are in no way a grant to the state by Congress, but a business transaction. Congress has no direct role in these land exchanges be-

1 tween the State of Idaho and federal agencies as it did when it originally  
2 granted endowment lands to the state through a congressional act.

3 Therefore, these newly acquired parcels, received through exchange  
4 with the federal government, do not fit the plain language of "general grants  
5 of land made by congress to the state." Rather, they are part of the broader  
6 category of "all state lands." Any other reading would render the words "gen-  
7 eral grants of land made by congress to the state" redundant and superfluous,  
8 which would not appropriately follow the rules of statutory construction so  
9 eloquently articulated in the Wasden case.

10 In addition, federal grazing preference rights are recognized as prop-  
11 erty rights in chapter 9, title 25, Idaho Code, and are protected under the  
12 Idaho Regulatory Takings Act, chapter 80, title 67, Idaho Code, and Sections  
13 1, 14, and 21, Article I of the Idaho Constitution. Therefore, the State of  
14 Idaho cannot lawfully extinguish those preexisting and legally recognized  
15 rights through an exchange.

16 SECTION 2. That Chapter 3, Title 58, Idaho Code, be, and the same is  
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
18 ignated as Section 58-303, Idaho Code, and to read as follows:

19 58-303. PERMITS. (1) At any time, a current state grazing lessee may  
20 make application to the department of lands to convert his state grazing  
21 lease into a state grazing permit if the lessee believes the land is so  
22 qualified. Application forms shall be provided by the department. Upon  
23 application, the department shall conduct research to determine if the land  
24 within the state grazing lease that is the subject of the application is  
25 qualified for a state grazing permit.

26 (2) To qualify for a state grazing permit, the land within the state  
27 grazing lease must have been received by the state through an exchange from  
28 the federal government on or after January 1, 2019.

29 (3) Within forty-five (45) days of application, the department shall  
30 determine if the land within the state grazing lease that is the subject of  
31 the application is qualified. If qualified, the permit shall be approved.  
32 If the land does not qualify, the applicant shall be notified of the reasons  
33 that the land does not qualify.

34 (4) A state grazing permit shall be valid for a minimum of ten (10)  
35 years and shall be subject to the same terms and conditions as a state graz-  
36 ing lease, including the annual payment pursuant to section 58-304, Idaho  
37 Code. Upon expiration of a state grazing permit, such permit shall be au-  
38 tomatically renewed as long as the preponderance of evidence shows that the  
39 permittee has complied with the terms and conditions of the grazing permit.  
40 Such state grazing permit shall be an appurtenance to the base property.

41 (5) If the preponderance of evidence shows that the permittee has been  
42 out of compliance with the terms and conditions of the state grazing permit,  
43 the department shall recommend to the state board of land commissioners that  
44 the permit be canceled. Upon adoption of such recommendation by the state  
45 board of land commissioners, the permittee shall be entitled to judicial re-  
46 view prior to the cancellation becoming final. If the court finds in favor  
47 of the permittee, the permit shall be renewed. If the court finds in favor of  
48 canceling the permit, the permit shall be canceled and the land shall be sub-  
49 ject to a state grazing lease.

1           SECTION 3. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after  
3 July 1, 2024.