

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 20, 1976

To Baxter State Park Authority

Dept. Baxter State Park Authority

From Sarah Redfield, Assistant

Dept. Attorney General

Subject The Use of Snowmobiles Within Baxter State Park as Contemplated by the 1976 Revision of the Rules and Regulations

This is in response to your request for an opinion as to whether the use of snowmobiles within Baxter State Park (hereinafter "the Park") as contemplated by the proposed 1976 revision of the Rules and Regulations governing Baxter State Park is consistent with the trust which created the Park. These regulations, as proposed provide:

"19. SNOWMOBILES: All persons using snowmobiles are restricted to the unplowed portions of the regular road system currently maintained by the Department of Transportation for vehicular traffic in the summer including the roads into South Branch Pond and Roaring Brook, but excluding those roads into Daicey Pond and Kidney Pond. The only exceptions are the tote road into Katahdin Lake from Avalance Field, a one-half mile section over the easterly projection of Baxter Park in Township 6, Range 8 along the west side of the East Branch of the Penobscot River in Township 6, Range 9 from the westerly end of Second Lake Grand Matagamon, the Telos cut-off road from the Telos Gatehouse to the Park perimeter road via Morse Mountain. Use of all other roads and trails is prohibited except by authorized personnel on Park business.

Operators travel at their own risk and must comply with all requirements of State laws and drive safely at all times. Operation by persons under 10 years of age is prohibited."

Essentially this regulation allows the operation of snowmobiles on the so-called "perimeter" road of the Park and on a few connecting road segments, (all of which are indicated on the attached map). It also apparently contemplates the use of snowmobiles on certain of the lakes within the Park.

The mandate of the Baxter State Park Authority is "to subordinate its own wishes to the intent of Governor Baxter. . . (and) to satisfy the terms of the trust," 12 M.R.S.A. §900. Governor Baxter's intent must be the essential reference point in any decision concerning the Park.

The trust instruments themselves are silent on the specific subject of snowmobiles. There is also some ambiguity in the general trust provisions. However, a review of the available evidence concerning Governor Baxter's intention in creating the Park indicates that he did not intend the use of snowmobiles, as contemplated by the proposed regulations, for purposes other than necessary use by employees of the Authority in emergency situations. The intent of the settlor of the trust is necessarily . . . determinative of the question. This intent is ascertained by analysis of the method of the creation of the trust, the trust instruments and other expressions of intent as follows:

The Creation of the Trust. Historically, Baxter State Park was created by an extended series of gifts of land from Percival Proctor Baxter to the State of Maine. From the outset, it was Baxter's intention that the State own Mount Katahdin and its environs. As his concept of and acquisition for the Park developed, Governor Baxter deeded to the State various parcels of land in Penobscot and Piscataquis Counties which now total the approximately 200,000 acres known as Baxter State Park, 12 M.R.S.A. §901. From 1931 to 1963 there were over thirty such conveyances to the State^{1/}. As Baxter desired there was formal acceptance by the incumbent Legislature of the documents creating the trust in the Private and Special Laws of the State of Maine;^{2/} similarly Baxter's formal letters to the incumbent Governor and Legislature concerning the

1/ In addition to the actual conveyances of land discussed herein, Baxter also provided the State with trust funds for the "purchase or other acquisition of additional lands for said Baxter State Park. . ." These lands, if acquired, are to forever be held by the "State of Maine in Trust for the benefit of the people of Maine for development, improvement, use, reforestation, scientific forestry, and the production of timber and sale thereof. . ." and may be "made a SANCTUARY FOR WILD LIFE". See clause THIRD of the Baxter intervivos trust dated July 6, 1927 as amended from time to time.

2/ The deeds appear in the Private and Special Laws as follows: 1931, c. 23; 1933, c. 3; 1939, c. 1; 1939, c. 122; 1941, c. 1, c. 95; 1943, c. 1, c. 91; 1945, c. 1; 1947, c. 1; 1949, c. 1, c. 2; 1955, c. 1, c. 3, c. 4, c. 61, c. 171; 1963, c. 1. Two additional deeds were accepted by the Forestry Commissioner and Governor; one dated October 7, 1931 conveying the remainder previously divided interests conveyed by the deed of March 3, 1931; the other deed dated November 9, 1938 is apparently incorporated within the deed in P. & S.L. 1939, c. 1. Unless otherwise indicated, references herein to deeds are in terms of the applicable chapters of the Private and Special Laws.

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Park were ordered published in the Laws of Maine "in order that the Records of the Gift by PERCIVAL PROCTOR BAXTER to the STATE OF MAINE as Trustee in Trust. . . be complete and in enduring form".^{3/} This method of conveyance was deliberately adopted by Baxter:

"In this manner a long list of precedents is being established; precedents which, as time passes will show that eight or ten different Governors and as many Legislatures, by laws duly passed and signed by these Governors, have entered into solemn pacts that create a succession of irrevocable trusts."^{4/}

Through this series of laws evolved the Baxter State Park trust, the creation of which was commenced in 1931 and was completed in 1963.^{5/}

^{3/} e.g. Private and Special Laws of 1941, at 699.

^{4/} Communication of Percival Proctor Baxter dated January 12, 1942 addressed to the Honorable Sumner Sewall, Governor, and the Honorable Senate and House of Representatives of the Ninetieth Legislature, printed with the Laws of 1941-42.

^{5/} That Baxter viewed the creation of the Park as a continually evolving trust is indicated by the introductory paragraphs of the deeds and acceptances indicated in note 2 herein. See also, the expression of this long-range approach in such communications as those of Percival Proctor Baxter dated March 3, 1931 addressed to The Honorable William Tudor Gardiner, Governor and the Senate and House of Representatives of the State of Maine, Laws of 1931 at 725; January 17, 1939 addressed to the Honorable Lewis O. Barrows, Governor and the Honorable Senate and House of Representatives of the Eighty-ninth Legislature, Laws of 1939 at 846; January 8, 1941 addressed to the Honorable Sumner Sewall, Governor, and Honorable Senate and House of Representatives of the Ninetieth Legislature, Laws of 1941 at 760-761; April 17, 1944 addressed to the Honorable Sumner Sewall, Governor and the Honorable Senate and House of Representatives of the Ninety-first Legislature of the State of Maine, Laws of 1945 at 982-983; January 4, 1945 addressed to The Honorable Horace A. Hildreth, Governor of Maine, Augusta, Maine, Laws of 1945 at 984-985; and January 8, 1947 addressed to The Honorable President of the Senate and the Honorable Speaker of the House and the Ninety-third Legislature, Laws of 1947 at 1244.

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The Trust Documents. The trust documents provide that the majority of the Park be used as State forest, for public park and public recreational purposes, forever to be left in its natural wild state^{6/} and as a sanctuary for wild beasts and birds.^{7/} In those areas which are sanctuaries, firearms, hunting, trapping and the landing of aircraft are prohibited.^{8/} An area of some 28,000 acres is not covered by the provisions as to natural wild state and sanctuary, but instead is devoted to the practice of scientific forestry.^{9/}

In the majority of the Park, then, the use of snowmobiles is appropriate only to the extent it does not contradict the basic concepts of State forest, public park and recreation, natural wild state, and, in most instances, wildlife sanctuary.

6/ These provisions appear in the Private and Special Laws as follows: 1931, c. 23; 1933, c. 3; 1939, c. 1, c. 122; 1941, c. 1, c. 95; 1943, c. 1, c. 91; 1945, c. 1; 1947, c. 1; 1949, c. 1; 1955, c. 1, c. 3; 1963, c. 1; they also appear in the deeds dated October 7, 1931 and November 9, 1938 accepted by the Governor and Forest Commissioner. The first deed does not specifically refer to "State forest" but this is included in P. & S.L. 1945, c. 1.

7/ The sanctuary provisions appear in all the deeds cited in note 6 herein except P. & S.L. 1955, c. 1; 1955, c. 3 (re: 14005 acres) as modified by P. & S.L. 1955, c. 4 and P. & S.L. 1963, c. 1. Hunting is allowed in these areas and in the scientific forestry area, a total of approximately 44,000 acres. Because the basic trust provision at issue is that mandating "natural wild state", instrument where the "sanctuary" provisions are absent are not separately discussed.

8/ See, particularly P. & S.L. 1945, c. 1 and references in note 6 herein. In P. & S.L. 1963, c. 1, hunting is allowed, but the landing of aircraft is prohibited.

9/ See P. & S.L. 1955, c. 61, c. 171. The snowmobile regulations proposed would not authorize snowmobiles within these areas and this memorandum does not attempt to render an opinion on such use. In view of Baxter's expressed desire that these areas be a showplace for the State and be managed with the most approved practices of scientific forestry, it would seem that a decision as to the appropriateness of snowmobile use within this area of the Park might be better addressed in the context of the plan for the management thereof.

To ascertain the meaning of these terms and their interrelationship, it is necessary to review the trust documents and, when ambiguity exists, other information available to clarify Baxter's intent. In an instrument written in 1955 Baxter outlined his view of the interrelationship of recreation, wilderness and access. He stated that the "area is to be maintained primarily as a wilderness and recreational purposes are to be regarded as of secondary importance and shall not encroach upon the main objective of this area which is to be "forever Wild."^{10/} Baxter also expressed his concern that the public have adequate access to the recreational potential of the Park.^{11/} This concern, however, is not unqualified; it is not with the Park's availability for all recreational use, but with its availability for "those persons who enjoy the wilderness" who will use the Park "in the right unspoiled way."^{12/}

The same interrelationship between access and natural wild state is indicated by an historical review of the expressions of the trust instruments concerning roads and ways. Baxter had originally intended to prohibit the construction of roads within the Park.^{13/} Ultimately these restrictions were removed and the State empowered to construct and maintain

"such roads and ways as the State as such Trustee shall deem to be in the public interest and for the proper use and enjoyment of those citizens of said State who may visit the area known as BAXTER STATE PARK, subject however, to the conditions, limitations and restrictions that said roads and ways be constructed and maintained in a manner not to interfere with the natural wild state now existing in said areas."^{14/}

^{10/} P. & S.L. 1955, c. 2. See also, Communication from Percival Proctor Baxter to the Honorable Horace A. Hildreth, Governor and the Honorable Senate and House of Representatives of the Ninety-second Legislature, January 2, 1945, Laws of 1945 at 985-989.

^{11/} See e.g. Communication of Percival Proctor Baxter to the Honorable Frederick G. Payne, Governor and the Honorable Senate and House of Representatives of the Ninety-fourth Legislature of January 3, 1949, Laws of 1949 at 1368-1370.

^{12/} See Communication of January 2, 1945 cited in note 10 herein;
¹² M.R.S.A. §900.

^{13/} P. & S.L. 1931, c. 23; 1933, c. 3; 1945, c. 1; 1947, c. 1.

^{14/} P. & S.L. 1949, c. 2.

Presumably, in deciding to allow such roads as would be compatible with the natural wild state in the Park, Baxter contemplated their use by certain motor vehicles. But the trust documents, with the exception of the prohibition of airplanes, are themselves silent as to the specific nature and extent of such vehicles. The allowance of roads, the emphasis on natural wild state, and the silence on the specific subject of snowmobiles create an inherent ambiguity in the trust documents as to the appropriateness of snowmobile use. The clarification of any such ambiguity is dependent upon the intention of the settlor of the trust. 15/

Clarification of Intent. To ascertain the settlor's intention concerning ambiguous matters, reference may be made not only to the legal instruments themselves, but also to such extrinsic evidence as may be relevant. 16/ In this context, inasmuch as the popular use of such vehicles is a relatively recent phenomenon, 17/ it is not unusual that the trust itself, largely completed by 1955, should contain no specific reference to snowmobiles. Indeed, as the growth in use began, Baxter did respond. Of primary relevance in this regard is Baxter's own expression of his views concerning snowmobiles in relation to natural wild state. On May 11, 1965 Baxter wrote to Helon N. Taylor, then Supervisor of the Park as follows:

"In regard to the Motor Skis, I have thought this over and have this suggestion to make. These skis should be prohibited in the Park except for one for you as Supervisor to use in case of emergencies. I feel strongly about this for they will frighten away the wild animals and we certainly would not see a caribou again. This same reason prompted us to forbid the use of motor boats on our lakes. I can see the damage they would cause.

15/ See IV Scott, The Law of Trusts §164.1 (1967); see also 12 M.R.S.A. §900

16/ See Scott, supra. Also see Little Rock Junior College v. George W. Donaghet Foundation, 224 Ark. 895, 277 S.W. 2d 70 (1955).

17/ The industry has grown from 10,000 units sold nationally in 1963 to 500,000 units in 1971. In Maine, snowmobile registration has increased from 19,986 in 1968-69, the first year registration was required, to 73,737 in 1974-75; (figures from the Bureau of Parks and Recreation.)

"I would be much pleased if the Authority would add this to the list of what is forbidden in the regulations. Would you please bring this to the attention of the Authority members for this is the time to kill it." (Full text of letter attached).

Almost a year later, on April 18, 1966, Baxter wrote to Austin Wilkins, then Forest Commissioner and Chairman of the Baxter State Park Authority, expressing his intent concerning motorcycles, vehicles in many ways similar to snowmobiles:

"I understand that there are several motor scooters and motorcycles in Millinocket that may be taken to the Park. These machines are so noisy and numerous, they should be forbidden to go into the Park area. If unrestrained, these noisy machines would frighten the wild life." (Full text is attached).

While these letters are to be accorded less weight than the formal legislative communications (and certainly less weight than the trust documents), their significance is not to be ignored. 18/

18/ In addition to letters discussed herein, the following individuals who knew and worked with Governor Baxter were contacted to ascertain whether the statements of the 1965 and 1966 letters were, to their knowledge, subsequently modified or contradicted Helon Taylor; James S. Erwin; Ronald Speers; Austin Wilkins; Irvin Caverly; Rodney H. Sargent; and Joseph H. Lee. The information provided by each of these individuals, except Austin Wilkins, confirmed the Baxter statements of 1965-66. Austin Wilkins orally reiterated his position as stated in his correspondence of January 15, 1970 to Senator Muskie. In explaining the regulations allowing snowmobiles Wilkins wrote:

"The decision of the Authority, in spite of public protest, to permit snowmobiles was on the basis that Governor Baxter did not intend to prohibit people from using the Park in the wintertime. . ." (full text of letter attached).

The Wilkins letter is not a statement of intent by Governor Baxter, as are the letters previously discussed; it is at best a synthesis by Wilkins of his understanding of Baxter's views. As such, it is of questionable legal significance. In any case, the weight to which this letter is entitled, if any, is far less than that of the letters written by Baxter with the clear indication that he was expressing his view of the precise subject at hand.

They are part of an extensive pattern of interaction between Baxter and the administrators of the Park which both parties knew would serve as guidelines in the future. 19/ From the records available, it appears that Baxter's desires concerning the Park were observed consistently and that he relied on such observance as a mechanism for continuing his influence and clarifying his position on various matters. 20/

On a more general level, beyond these specific written statements, Baxter's intention concerning snowmobiles can be determined by considering what purpose would be accomplished by allowing the proposed use, and whether this purpose is dependent upon and compatible with the basic wilderness nature of the area of the Park in question.

Snowmobiles would, of course, provide greater access to the park in winter. However, their exclusion would not "lock up the park" but rather would tend to limit its use to those "willing to walk to make an effort to get close to nature," see Title 12 M.R.S.A. §900. Activities involving snowmobiles are in no way dependent upon the unique wilderness values established for the Park by Governor Baxter; nor are they compatible with these values and the uses necessarily dependent thereon, such as hiking or wildlife observation. This potential incompatibility forms a rational basis for the distinction which Governor Baxter apparently intended between automobiles and snowmobiles and motorcycles. It is the potential for noise and ultramobility which may adversely affect wildlife in the Park and may also disturb those users of the Park who "love nature" 21/ and seek the

19/ See the letter from Percival Proctor Baxter to Albert Nutting, Forestry Commissioner, dated August 18, 1958 in which Baxter states "what action is taken nowadays will serve as precedent for the future . . . I realize that in the future, pressure will be brought to bear to break down the Trust conditions. Now is the time to take a firm stand which will give solid backing to the Authority."

20/ The consistency with which the Authority responded to Baxter and with which he relied on them to do so is evident in such letters and those from Attorney General James S. Erwin to Baxter, June 19, 1968; letter from Forest Commissioner Austin Wilkins to Baxter, June 26, 1968; letter from Attorney General Frank Hancock to Baxter, October 7, 1959.

21/ 12 M.R.S.A. § 900.

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"peace and solitude" 22/ with which Baxter was concerned. Even under this general analysis, the use of snowmobiles does not appear consistent with the general trust precepts.

Conclusion. The clearest available expression of Baxter's intention concerning the use of snowmobiles in relation to the trust conditions concerning natural wild state appears in the 1965 and 1966 letters cited herein. This expression is confirmed by a more general analysis of the trust's terms. Accordingly, the use of snowmobiles as proposed by the 1976 Revision of the Baxter State Park rules and regulations is not consistent with the trust, and snowmobile use within the natural wild state areas of the Park should be limited to use by Park personnel in emergency situations.

22/ Communication from Percival Proctor Baxter to Honorable Horace A. Hildreth, Governor and the Honorable Senate and House of Representatives of the Ninety-second Legislature dated January 2, 1945, Laws of 1945 at 985-989.

Sarah Redfield

SARAH REDFIELD

Assistant Attorney General

SR/bls

Mr. Helon N. Taylor,
Park Supervisor,
Baxter State Park,
Millinocket, Maine.

MAY 11, 1965

Dear Helon:-

Your report came this morning and I am sure all is coming along well for the season.

In regard to the Motor Skis I have thought this over and have this suggestion to make. These skis should be prohibited in the Park except for one for you as Supervisor to use in case of emergencies. I feel strongly about this for they will frighten away the wild animals and we certainly would not see a caribou again. This same reason prompted us to forbid the use of motor boats on our lakes. I can see the damage they would cause.

I would be much pleased if the AUTHORITY would add this to the list of what is forbidden in their regulations. Will you please bring this to the attention of the AUTHORITY members for this is the time to kill it.

I am looking forward eagerly to being with you with the same party we usually have.

Cordially,

Percival P. Baxter
Percival P. Baxter

B/c

up with and ban each type as they are modifications there is no reason to consider almost sacred. There will be little satisfaction in paradise and making camp beside internal gasoline engine. It is also ve travelers with large soft tires for summer Acadia Park has all the beauty at those who want to drive and see it wilderness for those who want to see!



To the Editor:
The article "A Day on the Mount" in Maine and our intent to live up Baxter in regard to his generous gift use of a powered vehicle on the trail direct violation of the terms of the gift citizens of Maine. It was specified that it would "not" be used in the "wilderness" area. Motor boats, airplanes and have been banned. It doesn't seem to name the different types of vehicles in

Objects To Vehicles

PERCIVAL P. BAXTER
PORTLAND, MAINE

April 18, 1966.

Hon. Austin H. Wilkins,
Forest Commissioner,
State House,
Augusta, Maine.

Dear Austin;-

I have your letter of the 13th giving me the account of the "blow-down" receipts. You did well to collect this money. I am interested to see just what was done and look forward to coming to the Park sometime next month.

*See memo with Austin
4/18/66*

I understand that there are several motor scooters and motor cycles in Millinocket that may be taken to the Park. These machines are so noisy and numerous, they should be forbidden to go into the Park area. If unrestrained these noisy machines would frighten the wild life. I should like you to discuss this matter with the other members of the AUTHORITY and Helon Taylor and pass a vote putting this restriction into effect.

Hoping that I shall be able to make my spring visit to the Park.

Sincerely,

Percival P. Baxter
Percival P. Baxter

B/c

STATE OF MICHIGAN

Baxter State Park Authority

January 15, 1970

The Honorable Edmund S. Muskie
United States Senator
Washington, D.C. 20510

Dear Ed:

For some unexplained reason, your letter of inquiry about the use of snowmobiles in Baxter State Park was misplaced in the volume of mail received on this subject. I take full responsibility for this inadvertent act.

The following appears to be the facts as the Baxter State Park Authority knows them relative to the use of snowmobiles in Baxter Park. The use of snowmobiles in the Park is nothing new but the recent phenomenal sale and use of snowmobiles in the last few years has brought this subject into sharp public focus and particularly with reference to Baxter Park.

For over 8 or 9 years Park Rangers have used snowmobiles for patrol purposes and law enforcement of which Governor Baxter was fully aware. A few years ago, due to the impact of the use of snowmobiles, a new Baxter Park Regulation was passed which permitted snowmobiles to travel in the Park on the perimeter State road but did include travel on the trail from the Roaring Brook Campground to Chimney Pond and also woods roads on Rum Mountain. As chairman of the Authority and my close association with Baxter, this was reviewed with him and I am sure that in his declining years he still understood what was meant by this snowmobile regulation.

However, due to public pressure and those who felt that the Governor's wishes were being violated under the "forever wild" concept, the Baxter Park snowmobile regulation was amended and an amended copy is attached. The revision restricted the use of snowmobiles to just the so-called perimeter road excluding any trails or other roads. The decision of the Authority, in spite of public protest, to permit snowmobiles was on the basis that Governor Baxter did not intend to prohibit people from using the Park in the wintertime. Therefore, the snowmobile regulation was adopted as a public access into the Park along the perimeter road to enjoy the beauty of the Park in the wintertime as well as those who are privileged to use the Park in the summertime with recreation, in the former, as purely secondary.

January 15, 1970

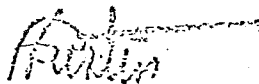
I believe the amended regulation is on trial and that for this year it remains to be seen how strongly enforcement can be carried out in restricting use of snowmobiles to the perimeter road. As part of our enforcement program, we have extensively circulated the new regulation, prominently posted the road as to "ski road," additional rangers have been put on for patrol purposes, people will be required to check in and register at the gatehouses, and all violators when apprehended will be prosecuted.

It was the thinking of the Authority that from evidence produced thus far there were no dangers of disturbing wildlife, causing a litter problem, destruction of any forest growth, and noise factor of little consequence.

Another point I should call your attention to is the fact that the perimeter road is a so-called public road and the Snowmobile Law provides that these snow traveling units may be used on public roads which are unplowed and unused during the winter months.

I am sure that you can appreciate that I have received a tremendous volume of mail. While most of it does run strongly in protest of using snowmobiles in the Park, there was considerable mail supporting the use but under some form of strict regulation and enforcement. We will certainly await the results of our enforcement program and then if there is a change necessary, we will take action.

Very truly yours,



AUSTIN H. WILKINS
Forest Commissioner
Chairman, Baxter Park Authority

AMW:as

Attach.