



# Columbia Seaplane Pilots Association

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## CSPA SPECIAL eBULL-A-TON

# Waldo Lake Ruling: Sweet Victory, but a Second Round Still to Fight . . .

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Any flight over water in a single engine airplane will absolutely guarantee abnormal engine noises and vibrations.

Greetings all, Its been a pretty slow fall as far as seaplane information, except for the CSPA court win on Waldo Lake. Yes, I know that this might be the first that you have heard about it but it is true. WE WON!!!, in Federal Court. The Judge ruled in favor of the CSPA complaint that the Forest Service had overstepped their authority in closing Waldo Lake to seaplanes. And the wording was strong. Judge Coffin and Hogan stated: "I am not persuaded by the government's argument" further stating that the Forest Service action was "arbitrary, capricious and an abuse of discretion."

Why have we delayed the announcement? Well the main reason is that we were not sure what this really meant. The FS had 60 days to appeal the ruling, which ended a few weeks ago. **The Forest Service did not file an appeal, but the inter- venter on their side -- McKenzie Flyfishers – did file an appeal.** When an appeal is filed it can take it a year or more to make it through the system and come to a conclusion. So the actual decision and win, per se, **is not yet final.** See the attached court decision, the real meat of the ruling starts about page 20.

Now a new wrinkle has come on the scene---our **Governor has taken it upon himself to now attempt to give the Forest Service a regulatory win in spite of the Court's decision.** Just last week in private meetings the Governor directed his department heads to sign an agreement with the Forest Service that agrees that seaplanes should be prohibited. This happened without any public process. A copy

of the Memo of Understanding is attached.

Benefiting one group at the cost to another, and doing it without an open process, is not democratic. It's not what Oregonians want from their government. The Marine Board web site says of the proposal: "This rule will implement the U.S. Forest Service's plan to create the largest motor-free lake in Oregon." The State of Oregon owns this lake and the people of Oregon should determine for itself what it wants Waldo Lake to be.

Why is the Governor racing to rubber stamp the Forest Service's flawed plan? This has all the appearance of a rushed lynching and political cronyism.

We will provide testimony at the Oregon State Marine Board hearing that there are reasonable alternatives to the Forest Service's "arbitrary and capricious" plan, and we will hope that our State Marine Board can think for themselves and be capable of making a decision based on facts, rather than on imaginary fears. What can you do? Well just like the Missouri Breaks fight we need to get the word out to those who might make a decision that we don't like, if we don't make our selves heard. The Announcement by the OSMB says that written comments are the order of the day but there are 2 hearings scheduled also. The way to comment in writing is outlined in the announcement and the hearings are the place for you to make your feelings heard to the members of the Board.

## Hearings Scheduled—Make Your Voice Heard, NOW!

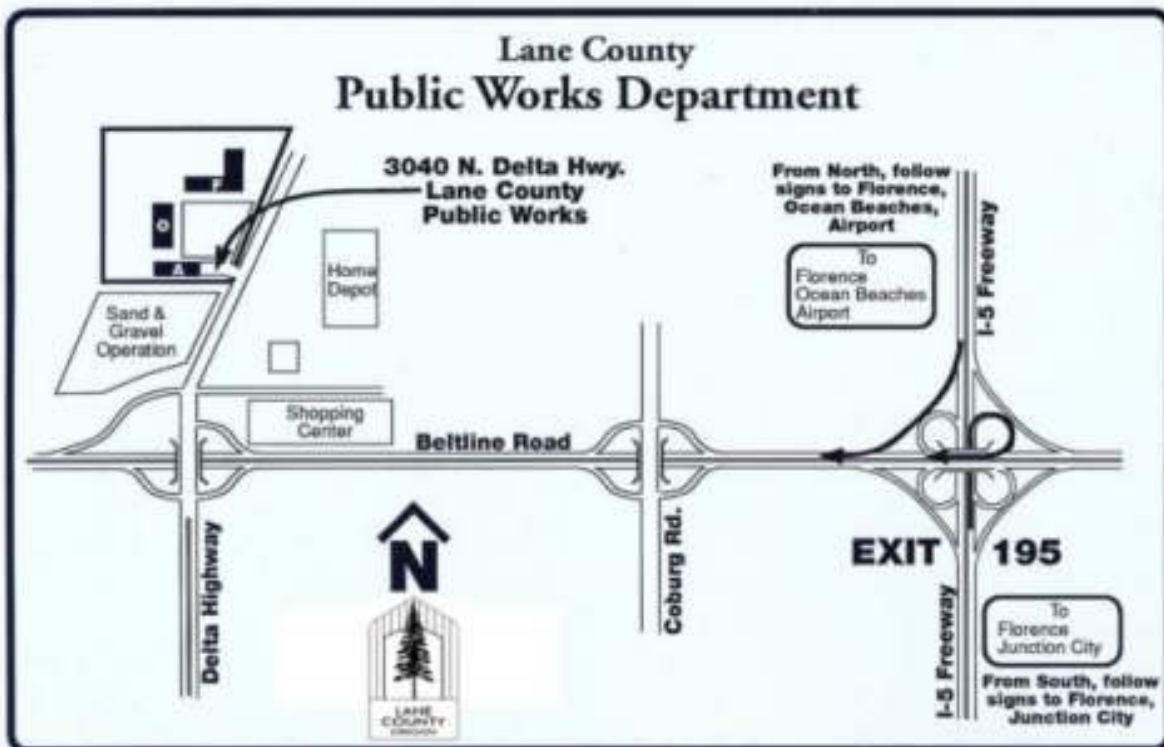
**11/23/09 6 p.m.** Lane Co. Public Works, Goodson Room, 3040 N. Delta Hwy., Eugene, OR 97408 — See map below. **THAT’S THIS NEXT MONDAY!!! BE THERE IF YOU CAN. IF NOT WRITE OR E-MAIL - IT’S IMPORTANT!**

**12/10/09 6 p.m.** Bend Fire & Rescue Training Center, Classroom 1, 63377 Jamison Rd., Bend, OR 97701.

**Oral Testimony will be made part of the record. The Marine Board is also accepting written comments.** Written comments will be accepted until December 15, 2009 at 5 p.m. Comments may be submitted by mail to June LeTarte, OSMB, PO Box 14145, Salem, OR 97309; by email to [osmb.rulemaking@state.or.us](mailto:osmb.rulemaking@state.or.us); or by fax to (503) 378-4597. Written comments may also be handed in at the public hearings. All comments must be received or postmarked by December 15. Telephone comments will not be accepted.

Contact the governor directly at: [http://governor.oregon.gov/Gov/contact\\_us.shtml](http://governor.oregon.gov/Gov/contact_us.shtml)

Feel free to take ideas for commenting on Waldo lake from the op-ed letters that Aron sent out. you can also find quotable material in the court decision document. Please cc us through e-mail or snail mail on any letters or comments that you make in regard to the Waldo lake OSMB hearings or to the Governor.



## Seaplanes are responsible users of Waldo Lake

Aron Faegre, CSPA President  
Op-Ed to The Oregonian, 11/16/2009

The Oregonian says “bravo” to Governor Kulongoski’s effort to enact a new rule to ban motorboat use on Waldo Lake. The rule would also ban floatplanes from accessing Waldo Lake. The Oregonian should not be cheering a plan, however, that is the result of a Chicago-style back room deal which seeks to get around a federal court ruling.

Governor Kulongoski’s “rule” comes in the wake of the U.S. Forest Service’s failed attempt to achieve the same end through a Management Plan that was overturned by a Federal District Court. But there is no sound reason to change the way Oregonians have been enjoying Waldo Lake throughout its history.

The Columbia Seaplane Pilots Association is a volunteer group that works to keep floatplane operations safe throughout the northwest. Be it because of safety, or weather, or planned itinerary, or even recreation, Waldo Lake is an important public access point for floatplane pilots traveling along the Cascade Range. Floatplanes access Waldo Lake in exactly the same way as others who drive their cars, SUVs and campers to the Lake and park at the water’s edge.

In August, the Federal District Court stopped the Forest Service’s land grab, finding that the Waldo Lake Management Plan was “arbitrary and capricious and an abuse of discretion”. Undeterred, the Governor last week made his department heads sign an agreement with the Forest Service. That agreement again mandates a prohibition on float plane access to Waldo Lake, but was subject to no public process or input. Put another way, the Governor has already signed a “private” agreement that reinstates the same prohibitions rejected by a Federal District Court. The Governor will next “ask” the Oregon State Marine Board to

pass a rule that implements the promises already made to the Forest Service. Any doubt how that “public” rulemaking effort will turn out?

There is no need for this rule. The Oregon Legislature already has a 10 mph limit on all motors using the Lake. The Forest Service spent several years searching for a pollution problem, but could find none. Nor has there ever been a single incident of pollution or safety from our floatplanes that rarely, but historically, access Waldo Lake.

The Oregonian is wrong to support back room deals that only serve to limit the rights of Oregonians. The State of Oregon owns Waldo and should determine for itself what it wants it to be. The Oregon Legislature has already decided that floatplanes can land on Waldo Lake and that when on the surface and operating as motorboats must stay below 10 mph. It is not the place of the Governor to circumvent these laws privately instead of through a rational and public process.

We intend to provide testimony on this rule and provide sensible and reasonable alternatives to the Forest Service’s “arbitrary and capricious” plan. And we hope, despite the Governor’s side agreement in advance, that our Marine Board members will think for themselves and make a decision based on facts rather than on imaginary fears.



Aron Faegre is the President of the Columbia Seaplane Pilots Association. From Oregon he has flown the Lewis and Clark water trail across the country, and through Canada as far north as the Arctic Ocean.

## Seaplanes Can Safely Share Use of Waldo Lake

Aron Faegre, CSPA President

Op-Ed to The Eugene Register Guard, 11/16/2009

I am a canoeist, and a seaplane pilot, with concerns about the pending restrictions at Waldo Lake. The facts about Waldo Lake are that it is pristine, has a 10 mph speed limit, and has no pollution or safety problems. The US Forest Service over the past 15 years has attempted a land grab to take over the lake as their own, using gas motor pollution as an artificial reason to turn an Oregon lake into federal property. In federal court Judges Hogan and Coffin recently put a stop to that declaring "I am not persuaded by the government's argument," further stating that the Forest Service action was "arbitrary, capricious and an abuse of discretion."

Due to the Admissions Act and the Equal Footing Doctrine, there is no question that Waldo Lake belongs to the people of the State of Oregon, not the U.S. Forest Service. No serious historian believes otherwise.

Our organization – the Columbia Seaplane Pilots Association – is a 30 year old volunteer group that works to keep seaplane operations safe in the NW. We have 300 members. For safety reasons, we need to continue to have occasional access to Waldo Lake when we are traveling south to Klamath Lake and California. For recreational reasons we also want to continue to be able to arrive at the lake and park our seaplane, just as cars are allowed to drive to the lake and park at the water's edge.

Two important facts: a) the Forest Service spent several years trying to find some pollution to base their prohibition on, but could find none, so they abandoned the pollution argument, and b) the Forest Service staff admitted to us that they had never seen a seaplane on the lake, nor were they aware of any safety problem created by a seaplane. So much for basing a plan on rationality or regulatory need.

The Governor has now jumped on the U.S. Forest Service's band wagon to nowhere, without considering facts or having any willingness to consider alternatives. Is it in the best interests of the people of the State to eliminate use by anyone but paddle boats, when there is no documented problem or need? That is selfish on the part of the canoeists and kayakers.

We wish to point out that Oregon seaplane pilots are welcomed to the pristine lakes of Canada. In British Columbia seaplanes even have a pact with the Provincial Parks Department to help in monitoring the remote lakes, and to help in bringing

out trash left by others. In BC environmentalists understand that seaplanes can help keep lakes pristine, and help save tax money for other important parks needs.

Oregon does not need to demonize responsible users of out-board motor boats and seaplanes. As proposed, this is an artificial rule that only further divides environmentalists against each other. We all have the goal of being responsible stewards of our State's great resources.

Our organization has over the past two years offered to meet with the Forest Service and the State to establish preferred locations for our use, but have been summarily excluded from every meeting about the lake. Just last week in private meetings the Governor directed his department heads to sign an agreement with the Forest Service that agrees that seaplanes should be prohibited. This happened without any public process.

Benefiting one group at the cost to another, and doing it without an open process, is not democratic. It's not what Oregonians want from their government. The Marine Board web site says of the proposal: "This rule will implement the U.S. Forest Service's plan to create the largest motor-free lake in Oregon." The State of Oregon owns this lake and the people of Oregon should determine for itself what it wants Waldo Lake to be. Why is the Governor racing to rubber stamp the Forest Service's flawed plan? This has all the appearance of a rushed lynching and cronyism. Baker City, Bandon, and Astoria residents, along with sailboaters, motorboaters, and seaplanes from around the state should have as much say about the future of Waldo lake as the canoeists local to the lake that want it for themselves.

We will provide testimony at the Oregon State Marine Board hearing that there are reasonable alternatives to the Forest Service's "arbitrary and capricious" plan, and we will hope that our State Marine Board can think for themselves and be capable of making a decision based on facts, rather than on imaginary fears.

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Aron Faegre is the President of the Columbia Seaplane Pilots Association. From Oregon he has flown the Lewis and Clark water trail across the country, and through Canada as far north as the Arctic Ocean.

**What follows is the Memo of Understanding between the U.S. Forest Service, Department of State Lands and the State Marine Board.**

JOHN R. KROGER  
Attorney General



MARY H. WILLIAMS  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

November 5, 2009

Mike Carrier, Policy Director  
Natural Resources Office  
Governor's Office  
255 Capitol Street NE, Ste 126  
Salem, OR. 97301

Paul Donheffner, Director  
Marine Board, Oregon State  
435 Commercial St. NE #400  
PO Box 14145  
Salem, OR 97309-5065

Louise Solliday, Director  
Office of the Director  
Department of State Lands  
775 Summer St NE, Ste 100  
Salem, OR 97301-1279

Re: Memorandum of Understanding: Waldo Lake

Dear Mike, Paul and Louise:

Enclosed for each of you is an executed original of the MOU on Waldo Lake.

Sincerely,

Jeffrey Adams  
Attorney-In-Charge  
Natural Resources Section

Enclosure  
JJA:jrs/DM#1709612-v1

## MEMORANDUM OF UNDERSTANDING

### **Between the Oregon Department of State Lands and the Oregon State Marine Board, and the United States Forest Service, U.S. Department of Agriculture, Regarding Management of Watercraft Operation on the Surface of Waldo Lake**

#### **1. Purpose**

The State of Oregon Department of State Lands and Oregon State Marine Board (Oregon) and the United States Forest Service (Forest Service) enter into this Memorandum of Understanding (MOU) for the purpose of achieving consistency related to the operation of boats and floatplanes on the surface of Waldo Lake.

Oregon has asserted that Waldo Lake is a navigable state waterway and that the Oregon State Land Board has a proprietary interest in the beds and the banks of Waldo Lake and the column of water above the bed and banks, and that the Oregon State Marine Board controls navigation and operation of boats and floatplanes on the surface of Waldo Lake.

The Forest Service has asserted that it manages and regulates recreational uses of Waldo Lake under its authority to manage national forests and the lands and waters contained therein, including regulation of the use of vessels and motorized machinery to achieve and protect the recreational experiences prescribed in the Forest Management Plan for the Willamette National Forest.

Without conceding any claims of respective ownership, jurisdiction or authority to manage the surface of Waldo Lake, Oregon and the Forest Service enter into this MOU in order to agree to the management of operation of boats and floatplanes on the surface of Waldo Lake under the standards set forth in Section 2 of this MOU.

#### **2. Standards for Public Use of Waldo Lake**

Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year-round.

“Watercraft” includes boats and floatplanes operating on the surface of Waldo Lake.

Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire

suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

### **3. Responsibilities**

Oregon and the Forest Service agree, to the extent practicable, that the parties will collaborate to implement and enforce the standards set forth in Section 2 of this MOU. Oregon will initiate administrative rulemaking with the goal of adopting the standards set forth in Section 2 of this MOU.

### **4. Relationship with Other Agreements, and Limitations**

Oregon and the Forest Service agree that this MOU does not conflict with the March 1995 Memorandum of Understanding signed by the Executive Director of the Oregon State Marine Board, the Forest Service, and the United States Bureau of Land Management, entitled "Memorandum of Understanding Concerning the Management of Recreational Boating on Oregon State Waters and the Navigable Waters of the United States." (NFS-95-06-59-14). A copy of the 1995 Memorandum of Understanding is attached to this MOU.

Nothing contained in this MOU is intended to supersede any existing agreements. No aspect of this MOU shall be construed as waiving or relinquishing any legal rights held by either Oregon or the Forest Service. This MOU is not intended to establish any property or ownership rights in Oregon or the Forest Service.

### **5. Amendments and Modifications**

Any changes or modifications to this MOU must be in writing and signed by all parties.

### **6. Points of Contact**

The designated point of contact for each signatory to this MOU shall be:

#### **Oregon State Marine Board:**

Paul Donheffner  
435 Commercial St NE #400  
Salem, OR 97309-5065

11. **Establishment of Responsibility.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States or its agencies and officers, or against Oregon.

12. **Authorized Representatives.** By its signature below, each signatory certifies that the individuals listed in this document as representatives of the Forest Service or Oregon are authorized to act in their respective areas for matters related to this MOU.

IN WITNESS WHEREOF: Oregon and the Forest Service duly execute this Memorandum of Understanding in accordance with the terms and provisions contained herein.

**Oregon State Marine Board:**

Paul Donheffner  
Director  
Oregon State Marine Board

11/5/09  
Date

**Oregon State Department of Lands:**

Louise Solidary  
Director  
Oregon State Department of Lands

11/5/09  
Date

**United States Forest Service:**

[Signature]  
Regional Forester  
Pacific Northwest Region

10/30/09  
Date



Mr. Governor:

I am most disappointed with your actions on Waldo Lake. I feel that you are trying to circumvent the public process that was just completed.

I am an advocate for seaplane access to wilderness areas. I feel that your tack on this is unfair and not inclusive of the wishes of the general public. It also shows a complete lack of knowledge about the impact of seaplanes on the environment. While we are a small group, we would like the same consideration as other groups. Our impact on our surroundings is very small and in accessing Waldo Lake we have less impact than someone driving to that location. I often fly to Waldo Lake either early or late in the season and find that I am the only one there. I would appreciate a broader approach to this from you. I have always supported you and I am very much in favor of protecting our wilderness, but banning seaplanes from Waldo Lake just does not accomplish anything except to make some environmental lobbies happy. Any of those people would happily board a float-plane in Alaska or Canada to access a pristine wilderness that they could not do any other way. Why should this be prohibited in the State of Oregon?

Sincerely,

John Chlopek



Waldo Lake, June 2008. Photo by John Chlopek

# Been to the Web site?

Follow your mouse to the CSPA Web Site: <http://c-spa.org/> Keep up with what's been going on in the float world, upcoming events, places to visit, stuff for sale. Cliff Gerber, aka the webmaster, has been hard at work fine-tuning the site, which now will allow payment of dues using Paypal, all from the comfort of your home keyboard. Or...feel free to clip and mail the dues form below just like the old days.

**Due to the URGENT Nature of the upcoming Waldo Lake hearings, the fully fleshed out version of the Bull-e-ton you have come to know and love is in the works and coming to a mailbox/inbox near you very soon.**

## PAID YOUR DUES? — DONATION FORM FOR LEGAL FUND

Clip and send to:

**Columbia Seaplane Pilots Association**

**18406 Nixon Avenue**

**West Linn, OR 97229**

\_\_\_\_\_ \$20 CSPA yearly dues

Donation to Columbia Seaplane Pilots Association Legal Fund to keep Waterways Open

\$\_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/ZIP \_\_\_\_\_

Telephone \_\_\_\_\_ e-mail \_\_\_\_\_