



JOHN A. KITZHABER, MD
Governor

January 31, 2013

Mr. Mark Gardiner, Chair
Oregon State Aviation Board
3040 25th St. SE
Salem, OR 97302-1125

Dear Chair Gardiner and Members of the Aviation Board:

Thank you for your continuing service to the State of Oregon as members and as chair of the Oregon State Aviation Board. As you know, the issue of Waldo Lake and uses of it has and continues to generate public interest and controversy.

State law requires the Oregon State Marine Board and Aviation Board to cooperate with regard to policy over motorized use of state waters, and while I recognize the term cooperation does not necessarily mean cooperating entities will reach full agreement, I urge you in the strongest possible terms to adopt consistent policy regarding Waldo Lake. As volunteer board members charged with making sometimes difficult decisions concerning the public interest, I realize you are not in a comfortable position. But I firmly believe consistent policy on this issue best serves the public.

Following the Marine Board's decision last spring to prohibit motorized use on Waldo Lake with some exceptions, the Aviation Board adopted temporary rules authorizing sea plane use with certain restrictions. As I understood it, this rule was intended to help quantify the actual scope of seaplane usage prior to the Board's consideration of a permanent rule. A notice of the temporary rule went to over 750 aviation stakeholders. In response, a total of four sea plane trips occurred on Waldo Lake during the 2012 season.

I recognize that two very different arguments aimed at two very different policy outcomes could be crafted based on this fact of four sea planes using Waldo Lake during the past year's normal season of use. This dynamic sets up a classic minority / majority debate that frequently arises around public use of commonly held natural resources. On the one hand, four planes per year is not much, so why prohibit such a use if there appears to be little harm to others in perpetuating it? On the other hand, four planes is not much, so why perpetuate this use in favor of so few if it upsets the experience of the many other public users?

In my mind, the latter argument is more persuasive in this case. And I come to this conclusion not because I believe the majority of voices on a given issue should necessarily trump the minority, but because of the public resource here in question: Waldo Lake.

When the Oregon Legislature established the State Scenic Waterway system in 1983, it singled out Waldo Lake as the *only* lake in the State of Oregon that would be designated among the unique, high quality

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waterbodies protected within this system. The legislature named numerous rivers, but Waldo Lake was the only lake. In ORS 390.815, the legislature determined that:

The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public.


The Lake itself is designated as a Natural Area under the state scenic waterway program, meaning that it must be administered to preserve its natural, wild and primitive condition, essentially unaltered by the effects of man. Everyone who has visited Waldo Lake knows the magic of its crystal clear pristine waters, the unique absence of development along its shores, and the wild quiet that provides a refuge of peace from our hectic world. Indeed, this uniqueness and wildness is why people of diverse interests go to this place. These values are part of an Oregon treasure that no longer exists in abundance across our landscape, and I believe these values are best preserved through a prohibition of motorized use of these waters.

The Aviation Board's rules already prohibit sea plane use on any water body "*designated as a state or federal Wilderness or Primitive area or Wildlife refuge*". OAR 738-040-0018(1). The Board's rules also prohibit sea planes on waters where the Marine Board has prohibited motors. OAR 738-040-0018(2). Despite these rules and the Marine Board's earlier decision, the proposed rule before you takes Waldo Lake in an inconsistent, opposite direction. Moreover, the other relevant entities with authority over the Lake's surrounding land, waters, and public recreation thereon—including the Marine Board, Oregon Parks & Recreation Department, and U.S. Forest Service—have encouraged the Aviation Board to adopt consistent policy.

In no way do I seek to challenge sea plane use generally or imply illegitimacy of this form of transportation and recreation. The issue is the location of this use in one particular special place on Oregon's map. The Aviation Board is legally charged with exercising its powers "** * * in all respects commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, or using or traveling in aircraft, and of persons or property on land or water.*" ORS 835.035. While a prohibition of sea plane use may need to include some limited exceptions, I suggest there can be no doubt in this circumstance that the general public interest is in preserving the experience of non-motorized recreation on Waldo Lake.

Thank you and the other members of the Aviation Board for your careful consideration of all of the public comments received concerning this important decision. I appreciate your ongoing service.

Sincerely,



John A. Kitzhaber, M.D.
Governor

cc: Mr. Mitch Swecker, Director, Oregon Aviation Board
Mr. Scott Brewen, Director, Oregon Marine Board
Mr. Rick Allen Chair of Marine Board