

April 3, 2012

George Tinker, Chairman
State Marine Board
435 Commercial St NE
Salem, OR 97301

Dear George:

Next week the Marine Board will have a unique opportunity to remedy a terrible decision made two years ago when the Board was coerced into banning motors on Waldo Lake. In my 33 year career with the agency, the decision over Waldo is the only thing I really regret. It was the wrong choice, for the wrong reasons, and we all knew it at the time. It's all on the record.

For many years the Marine Board opposed the U.S. Forest Service's efforts to ban motors. We were firmly on the record against this ill advised idea. All of the arguments for a ban were empty. There was no pollution issue. The noise of motors was minor compared to loud music, generators in campgrounds and barking dogs. Ultimately, the U.S. District Court ruled that the Forest Service's decision to ban motors was "arbitrary and capricious" and threw it out. We rejoiced.

So what were we then forced to do? Make the same arbitrary decision after extreme political pressure from the Governor's office. Recant all our previous positions. Sign MOUs against our best judgement. The whole public comment period was a sham, and the decision a forced one.. When the pending lawsuit goes forward, as it will if there are no changes, I firmly believe the Board is going to be on the losing side. I know, the State's attorneys think that cleaning up these "procedural" issues is sufficient. But this doesn't address the most fundamental problem: the Legislature set a speed limit for motors on the lake, and the Board doesn't have the authority to super cede that Legislative directive. Past case law is not on the Board's side. I'm hoping this current rulemaking isn't the same kind of sham, with a decision already made, no matter what.

Any reasonable person (and the courts) will conclude that when the Legislature set a speed limit, they meant motors were allowed. Why defend a bad decision the Board didn't honestly support to begin with? I would hate the see the agency spend several hundred thousand dollars in legal fees hoping it's going to win. It's a bad bet. These are boater funds that could be better spent supporting law enforcement, facilities or education. **Why waste these dollars at a time of tight budgets, for no good reason?**

Waldo is a huge lake! There is room on the lake for a variety of users to lose themselves. The Board's own surveys show limited motorized use, primarily by sailboats as auxiliary power. Even at 10 mph, it takes all day to navigate around the lake. It's big enough that everyone should share it. The Board's

own policies state that restrictions or bans are a management measure of last resort. It's the wrong prescription for a lake this size, which is already limited by geography, elevation, weather and a statutory 10 MPH speed limit!

Are there better alternatives? Obviously. One of these would be to repeal the rule. However, I think the fallout from an outright repeal would be significant. So, the better course would be to revise the rule in a compromise that protects the lake and allows multiple use.

This compromise would prohibit any motor that doesn't comply with the Environmental Protection Agency's 2006 standards. And simply exempt seaplanes.

Essentially, this would prohibit the older two stroke engines which are dirtier and noisier. EPA compliant engines (mostly 4 stroke) are clean, quiet and non-polluting. This addresses perceived issues with pollution and noise, and preserves the right of sailboat owners and other small boat users to access the lake. Seaplanes should also be exempted. Their use is so infrequent as to be a total non-issue.

Limiting boats to 4 stroke engines is the solution adopted years ago in California at Lake Tahoe. At the time it was considered very radical, but now it's well accepted and almost all engines are 4 stroke anyway. Waldo Lake has many similar characteristics with Lake Tahoe: high elevation, clear water, etc.

This is a commonsense solution, that has good solid justifications. It adds protections for Waldo Lake while also preserving the public right to navigate and use the lake as its been used for many years without ill effects. This solution should end the current litigation, and likely save the Board several hundred thousand dollars in legal costs. Limiting use to 4 strokes would be consistent with the 10 MPH limit the Legislature has adopted.

I realize the public comments heavily favor the status quo ban. This proves: 1) some groups are well organized and good at automated email campaigns and 2) there are very few motorized users (which we already knew). The final decision isn't a popularity contest. It's just as important to protect the minority (in this case a few sailboat users, small boat owners and the occasional seaplane).

I pray the Board will use its wisdom to adopt a compromise rule and make right on the forced wrong of two years ago.

Sincerely,

Paul Donheffner
OSMB Director 1984-2009