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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,

Jas 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

Oregon Department of State Lands:

Louise Solliday
775 Summer St. NE, Suite 100
Salem, OR 97301-1279

United States Forest Service:

Willamette National Forest
211 East 7th Avenue
Eugene, OR 97401

7. Freedom of Information Act (FOIA) and Oregon Public Records Act. Any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552). Any information furnished to Oregon under this MOU is subject to the Oregon Public Records Act (ORS 192.410 – 192.505).

8. Commencement/Expiration/Termination. This MOU takes effect upon the signature of the Forest Service and Oregon and shall remain in effect for 10 years from the date of execution. This MOU may be extended or amended upon written request of either the Forest Service or Oregon and the subsequent written concurrence of the other(s). Either the Forest Service or Oregon may terminate this MOU with a 60-day written notice to the other(s).

9. Responsibilities of Parties. The Forest Service and Oregon and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in implementing this MOU. The Forest Service and Oregon will carry out their separate activities in a coordinated and mutually beneficial manner.

10. Non-Fund Obligating Document. Nothing in this MOU shall obligate either the Forest Service or Oregon to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and Oregon will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by the appropriate authority under applicable statutes. This MOU does not itself provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

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