



# Oregon

Theodore R. Kulongoski, Governor

May 6, 2004

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RE: File Code 1950 NEPA

Dear Rick:

This letter responds to your memorandum relating to Waldo Lake - Managing Recreation Use Environmental Assessment Public Scoping, dated April 22, 2004. The Oregon State Marine Board remains keenly interested in boating issues at Waldo Lake. We are encouraged that the Forest Supervisor withdrew the December 3, 2001 Decision Notice and elected to collect additional information and public comment in order to further analyze recreation use options at Waldo Lake and prepare a revised Environmental Assessment. We also hope that this process might lead to productive discussions between our agencies about appropriate measures for managing recreational boating at Waldo Lake.

For the record, I will restate our agency's position on the proposed action. In addition, I will recommend alternatives to the proposed actions related to recreational boating on Waldo Lake.

The proposed action would change the ROS designation of Waldo Lake to Semiprimitive Nonmotorized.

This is an excessively drastic shift in management from the existing situation. Waldo Lake has been used by a variety of boats since the construction of the access road in the mid-1960s and the campgrounds in the early 1970s. Since then, motorboats of all types have been permitted on the lake. However, after the Oregon legislature enacted a ten-mile-per-hour speed limit for boats in 1973, the type of boats used on Waldo Lake effectively became limited to small vessels, including boats with motors and boats without motors. As a result, low-speed boating has been the established boating pattern on Waldo Lake and has endured for a period spanning three decades.

Over the years, the number of watercraft using motors has not increased significantly nor have boating use patterns intensified appreciably, particularly given the size of the lake and the dampening effect of the state-imposed speed limit. The prevalent mix of boats at Waldo Lake remains consistent with the "default" Roaded Natural ROS classification as well as long-standing Congressional designations and appropriations, which enabled motorboats to be launched into Waldo Lake in the first place. In fact, the mix of boats and boating use patterns has changed very little, if at all, over the years.

In addition to Roaded Natural, the Semi-Primitive Motorized classification could also capture the existing situation and could be utilized to obtain some of the benefits the Forest Service intends to provide and be a much less drastic change from the existing condition. But the

proposed shift to ROS Semiprimitive Nonmotorized classification would significantly alter the historic mix of boats and boating patterns - categorically denying access to users, many of whom have used their boats at Waldo Lake for years. Such a modification in management is unnecessarily restrictive given the long history of lawful use of motorboats on Waldo Lake. This is particularly true when other management options could accomplish many of the outcomes desired by the Forest Service short of reclassifying the ROS of the lake surface to effectively eliminate one type of use.

The rationale provided in the withdrawn Decision Notice focuses on "maintaining" or "retaining" the pristine setting of Waldo Lake based on visitor-expressed ethereal themes that encompass "perceptions of wildness, remoteness, solitude, or quiet places, and naturalness". According to the Tables A-1 through A-7 in Appendix A of the Environmental Assessment there are no differences between Semi-Primitive Nonmotorized and Semi-Primitive Motorized classifications under Visitor Management, Social Encounters, and Facilities and Site Management criteria. There are arguably minor differences between these two classifications when they are applied to Waldo Lake under the Access, Remoteness, Naturalness, and Visitor Impacts criteria. In reality, the supportive descriptive information for these criteria appears poorly suited to assigning classifications for lakes and distinguishing between various boating activities.

In spite of decades of low boating use and low-impact boating activities, the Forest Service seems determined to radically change the ROS classification of the lake surface and, hence, boating uses allowed at Waldo Lake. This decision appears to be driven solely by comments from users and non-users, many who apparently object to the very presence of motorized boats. The Decision Notice acknowledges this, stating that the rationale for the proposed restrictions on boating is based on ethereal themes. Even though some users may desire a different type of experience (motor-free) than they are able to currently enjoy at Waldo Lake, there is no other basis to support a decision to reclassify the ROS of the lake surface to eliminate motorboat use.

To my knowledge, there has been no Congressional direction to the Forest Service to change ROS classifications to alter boating use patterns at Waldo Lake. There has been no special designation accorded by Congress that would support the proposed action. In drawing the wilderness boundaries Congress intentionally avoided including the lake and lakeshore from wilderness designation, in recognition of the type of activities present and allowed. In fact, there is little to distinguish Waldo Lake from an ROS standpoint from many other lakes in Oregon that are surrounded by federal lands. So, the Forest Service appears to have no special mandate to provide some Waldo Lake users with any higher degree of protection (at the expense of other lake users) that would justify this radical shift in management.

In determining the appropriate classification for the lake surface, the Forest Service should follow the lead of the State of Oregon, which has given clear directions as to how boating on Waldo Lake should be managed. The legislature imposed a ten mile-per-hour speed limit for motorboats. This clearly recognizes that motorboats are to be allowed on the Lake. Waldo Lake was designated a State Scenic Waterway by the Oregon legislature. Motorboat use was a present and established part of the mix of recreational activities and compatible with the qualities that allowed Waldo Lake to be included in the State Scenic Waterway System.

Therefore, if a change from the current classification in the Forest Plan is warranted, I recommend that the Forest Service adopt the Semi-Primitive Motorized classification for the surface of Waldo Lake. I believe that this classification would allow the Forest Service to

accomplish a number of its stated objectives, particularly if this reclassification were adopted in conjunction with a ban on the use of EPA non-compliant two-stroke outboards, a restriction the Marine Board would be willing to consider adopting. This approach would permit historical use of boats with motors while reducing any "sight and sound" impacts associated with older, non-compliant outboards. Thus, boats with electric or EPA-compliant outboards and boats with inboard engines would be able to use Waldo Lake. At the ten-mile-per-hour speed limit boats with these engines produce little noise and virtually no pollution. This option would also result in the state assuming implementation and enforcement responsibilities rather than relying solely on federal actions.

The proposed action would prohibit the use of gas-powered boat motors on the lake except for emergencies and approved research.

Banning gasoline motors is a disproportionate management action based on the actual impacts that can be attributed to gasoline motors. This approach collectively treats all gasoline motors the same, regardless of the characteristics of different types of gasoline engines. It also presumes that all gasoline engines have the same impacts, regardless of engine design, condition and operation. In addition, an across-the-board ban on gasoline motors presupposes that other regulatory measures, such as seasonal or temporal restrictions, cannot create conditions essentially equivalent to a complete ban, at least for many users who may feel that motorboats intrude on their experience at Waldo Lake.

Curiously, the proposed action would ban boats with gasoline engines while allowing boats with electric engines. This seems inconsistent with the proposed ROS classification of Semi-Primitive Nonmotorized, but is telling in terms of isolating the actual reasons some users may find gas-powered boat motors offensive. The Decision Notice states that the "use of electric motors is an acceptable and non-intrusive compromise". Based on the stated justification, the only differences between gasoline and electric engines must, therefore, be noise, visible emissions, and possibly smell. Otherwise, what other potentially intrusive impacts (size, speed, passenger capacity, color, hull type, etc.) could be even loosely associated with gas-powered watercraft and not with boats using electric motors? If noise, emissions and smell are the distinguishing criteria, then newer four-stroke boat engines and inboard motors that produce significantly less noise and emissions might be acceptably inoffensive to many users.

If the Forest Service is truly interested in protecting some users perceptions of wildness, remoteness, solitude, or quiet places, and naturalness, I don't understand how the categorical exclusion of gasoline motors can serve as the singular measure to assure this type of experience. Under this action, for instance, it would be perfectly acceptable for a large, motorless sailboat with a boisterous crew to anchor just off of a dispersed campsite and have a party complete with blaring music from an on-board stereo, but it would be illegal for a small fishing boat, powered by a four-stroke outboard to troll or even anchor just off-shore from the developed campgrounds where RVs are in use. This hardly seems logical or rational.

The proposed ban on gas-powered boat motors is also excessive because the Forest Service is unable to demonstrate any harm to federal lands or interests attributable to gas-powered boat motors. Waldo Lake was meandered in 1884 and clearly became property of the State of Oregon at the time of statehood. The state's authority to issue water rights, manage fish and wildlife, protect water quality and to manage recreational boating is unquestionable. In terms of boating, the state has provided the only active management at Waldo Lake by adopting state regulatory measures, enforcing state boating laws, and providing emergency safety/rescue services.

Though surrounded by federal lands, the Forest Service does not claim that gas-powered boat motors on Waldo Lake threaten these lands in any way. The sole justification for the proposed action is to accommodate some users perceptions that gas-powered motors interfere with their sense of wildness, remoteness and solitude – perceptions that are out of character with well-established conditions and management. This is hardly a threat substantial enough to warrant the Forest Service's attempt to pre-empt state authority over recreational boating. Surely federal interests and property are not so threatened by gas-powered boat motors that the Forest Service must propose a unilateral federal policy that is so obviously at odds with the Oregon legislature and years of state management of recreational boating.

I recommend, therefore, that the Forest Service replace the proposed ban on gas-powered boat motors with a proposed action to request that the Marine Board adopt a regulation prohibiting the use of gas-powered boat motors that do not meet the 2006 EPA emission standards. This approach would clearly focus on the alleged offending conditions of motor sound and visible emissions from boat engines instead of a blanket prohibition that treats all gas-powered boat motors identically. We have offered this option to the Forest Supervisor in the past and still view this solution as an acceptable compromise.

Finally, your memorandum also alludes to a new alternative that would partition the summer recreation season between motorized and nonmotorized boat use. While we would prefer that users with all types of boats be allowed to enjoy Waldo Lake anytime and any place, the concept of using temporal or spatial zoning is worth exploring. Zoning provides users with predictable settings in which they can pursue experiences that are consistent with zonal conditions. Thus, users of Waldo Lake who are offended by boats with motors would have a predictable time or place that is certain to be free of motors. Similarly, this approach would provide people who use boats with motors to know they could use Waldo Lake during some time period or a specified location during the summer.

While I have no specific recommendation with respect to a particular zoning approach at this time, I would support any efforts to reach an acceptable accommodation through zoning that would be fair to all users. For instance, though it can be difficult to establish demarcation lines on a body of water, a buffer zone such as a 200-foot motor exclusion along the entire western shore of the lake might prove workable. The 200-foot distance is well known to boaters statewide and they are accustomed to judging this distance fairly accurately. Certainly, the impact of a boat traveling at or below the speed limit at a distance of 200 feet off shore would be small, if discernible at all. Non-motorized craft would also be able to use the 200-foot zone throughout the season and have some separation from motorized boats.

In terms of temporal zoning, alternating motorized, nonmotorized weekends (Thursday through Sunday) is an approach that has gained acceptance on the lower Deschutes River. Each year, the Marine Board publishes and distributes a calendar of motorized and nonmotorized days for the Deschutes, in cooperation with the Bureau of Land Management. The calendar allows users who are able to plan their visits in advance to select time periods that best meet their needs. Plus, over time, major holiday weekends tend to even out between motorized and nonmotorized use. This technique only affects motorboat users, as users of nonmotorized boats can choose any dates throughout the summer. Such an approach might also work at Waldo Lake.

These are a couple of examples of ways to achieve desired conditions through limited regulation rather than categorical prohibition. I would welcome the opportunity to confer

with Forest Service staff to identify a zoning approach that would support mutually acceptable outcomes and provide some certainty and equity for boaters and other users of Waldo Lake. Again, a zoning option could be implemented and enforced entirely through State regulations, relieving the Forest Service of having to assume a new regulatory and enforcement burden.

If you or your staff would like to discuss boating management issues further with my staff or me as you proceed with revising the Environmental Assessment, please do not hesitate to contact this office.

Sincerely,



Paul Donheffner, Director

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