



# Columbia Seaplane Pilots Association

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Oregon State Marine Board  
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RE: PROPOSED OAR 250-020-0221 (10)  
NOT CORRECT REGULATORY PROCESS

To Members of the Board:

## FLOATPLANES HAVE HISTORICALLY USED WALDO LAKE

Floatplanes have historically operated on Waldo Lake for two different purposes:

- a) During flights of interstate commerce as a navigable waterway, especially while flying between the Willamette Valley, over Willamette Pass, and then south along Klamath Lake to California. Waldo Lake is an important stopping point especially when clouds or fog near the summit pass make navigation to and from the Willamette Valley difficult. In addition to weather reasons, Waldo Lake is an important stopping point for purposes of fuel conservation (while awaiting better weather), meals, health of pilot or passengers, and precautionary landings for inspection of aircraft systems or other safety purposes.
- b) For recreational arrival and departure from the lake, similar to that of automobiles, after which the seaplane is parked at the shore.

It is important to note that seaplanes have no need to use Waldo Lake for purposes of touring the lake by motor, fishing by motor, or other recreational type uses similar to that of a motorboat. Seaplanes often carry inflatable boats or canoes, which are then used for recreational purposes with paddles, similar to the inflatable boats or canoes brought to the lake by automobile or truck.

## NO DOCUMENTED HISTORY OF SEAPLANE PROBLEMS ON WALDO LAKE

A copy of the Columbia Seaplane Pilots Association appeal to the U.S. Forest Service is attached to this letter submittal. It contains detailed data showing that there is no record in the U.S. Forest Service planning documents, or anywhere else, of a seaplane problem on Waldo Lake. The appeal documents that the U.S. Forest Service staff admitted they had still never seen a seaplane on Waldo Lake. The U.S. Forest Service staff admitted that their goal of prohibiting seaplanes from Waldo Lake was based only on a "social" goal, not a noise or safety goal or standard.

During both the U.S. Forest Service plan comment period and the appeal period, the Columbia

Seaplane Pilots Association requested joint negotiations with the U.S. Forest Service to potentially establish seaplane restricted areas on the lake if necessary, and potential seaplane operational rules if necessary. However, the U.S. Forest Service refused to meet to discuss any potential restricted areas or operational rules.

#### FOREST SERVICE PLAN TO PROHIBIT SEAPLANES RULED “ARBITRARY, CAPRICIOUS, AND ABUSE OF DISCRETION”

The Columbia Seaplane Pilots Association went to federal court to attempt to allow continued access to Waldo Lake by seaplanes. Judges Hogan and Coffin of the United States Federal District Court (Oregon) in July 2009 ruled that the U.S. Forest Service rule was “arbitrary, capricious, and an abuse of discretion” which resulted in seaplanes being allowed to continue to have access to Waldo Lake.

Since Waldo Lake is navigable, under the Admissions Act and Equal Footing Doctrine, it is a “state water” not a federally-owned waterbody. Thus any rule about seaplane use should be by state regulation, not federal regulation.

#### THE MARINE BOARD CANNOT PASS A RULE THAT CONTRADICTS A STATUTE

The Oregon State Marine Board is considering a new rule which would prohibit seaplanes from operating on the surface of Waldo Lake:

*“(10) 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.” [proposed OAR 250-020-0221 (10)].*

The Oregon Legislature has designated certain waters of the state on which motors are prohibited. ORS 830.180. Waldo Lake is not on the list passed by the Legislature. Waldo Lake, however, is included on the statutory list of waters on which motors are allowed at limited speeds. ORS 830.180.

The rule proposed by the Marine Board would impermissibly amend these statutes. The Marine Board cannot override a legislative directive, or pass a rule that violates a statute passed by the legislature. Any change to these regulations governing the use of motors on Waldo Lake must be authorized by the Oregon Legislature.

#### STATE AVIATION BOARD IS PROPER REGULATORY AGENCY FOR SEAPLANES

The regulation of seaplanes operating on state waters is governed primarily by the State Aviation Board, not the Oregon State Marine Board. ORS 835.200 through 210 provides a process for such consideration, as listed below:

##### *SEAPLANE REGULATION*

*835.200 Rules for operation and safety. (1) The State Aviation Board, pursuant to ORS 835.035 and utilizing the definitions contained in ORS 830.005:*

*(a) Shall adopt rules governing seaplane safety and operations on state waters, as defined in ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any applicable laws or regulations of an agency of the United States.*

*(b) May adopt rules governing seaplane safety and operations on waters of this state, as defined in ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any applicable laws or regulations of an agency of the United States.*

*(2) The State Aviation Board shall adopt the rules in subsection (1) of this section in consultation with the State Marine Board and the State Parks and Recreation Department.*

*(3) The rules in subsection (1) of this section shall include identification of zones and bodies of water on which seaplanes may not land, take off or operate.*

*(4) As used in this section and ORS 835.210, "seaplane" means an aircraft equipped to land on water. [Formerly 835.080; 2005 c.22 §519]*

*835.205 Seaplane regulation. For purposes of ORS 830.175, 830.180, 830.185 and 830.195, the Oregon Department of Aviation, in cooperation with the State Marine Board, shall regulate boats that are seaplanes as provided in ORS 830.605 and 835.200. [Formerly 835.045; 2003 c.14 §505]*

*835.210 Application by political subdivision for special regulation. (1) The governing body of a political subdivision of this state may apply to the State Aviation Board for special regulations relating to the operations of seaplanes on waters within the territorial limits of the political subdivision. These regulations may include, but need not be limited to, the establishment of limits on the areas of operations, hours and time of operations, and the prohibition of seaplane landings and takeoffs. Within a reasonable time, the board shall act upon the application in accordance with ORS chapter 183.*

*(2) For purposes of regulation, no political subdivision of this state may enact or enforce any law or other regulation for purposes of subsection (1) of this section. [Formerly 835.085]*

Seaplanes during takeoff and landing are governed by the Federal Aviation Administration and the Oregon Department of Aviation. When on the water and not operating for purposes of taking off or landing, seaplanes revert to the status of vessel and then are governed by the U.S. Coast Guard and the Oregon State Marine Board. Any regulations that affect seaplanes on waters of the state, however, must be made in cooperation and consultation with the State Board of Aviation. ORS 830.110(19).

Thus, regulation of seaplanes when arriving to or departing from Waldo Lake is under the primary jurisdiction of the State Aviation Board. The statute requires that any process to prohibit seaplanes start with the Oregon Department of Aviation and the State Aviation Board.

#### **COLUMBIA SEAPLANE PILOTS ASSOCIATION REQUESTS TO WORK JOINTLY WITH STATE AVIATION BOARD AND OREGON STATE MARINE BOARD ON ACCESS ISSUE**

The Columbia Seaplane Pilots Association is an Oregon non-profit organization representing approximately 300 seaplane pilots in the northwest. It has been in continuous existence for 30 years and has the mission of maintaining the safe capability of seaplanes as a transportation mode in Oregon and surrounding waterways.

The Columbia Seaplane Pilots Association requests that the seaplane access issue to Waldo Lake be worked on jointly with the State Aviation Board and the Oregon State Marine Board.

Seaplanes commonly operate in wilderness and remote areas all across the United States and Canada, and know how to do so with minimum environmental impact. In fact seaplanes provide access to remote areas with less environmental impact than that required by cars and trucks which require the maintenance of permanent systems of roads for the motor vehicles.

The Columbia Seaplane Pilots Association requests that the Oregon State Marine Board follow its policy of promoting multiple use per OAR 250, Division 19.

*250-019-0010*

*Policy*

*(1) It is the policy of the State Marine Board to promote multiple use and enjoyment of waters of the state for a variety of boating activities. The Board recognizes and will uphold to the extent practicable the universal right of the public to navigate and use the waters of the state for boating. [It is noted that per 250-019-0020 (5) "Boat" means every description of watercraft, including a seaplane on the water and not in flight.]*

Columbia Seaplane Pilots Association requests that a complete and thorough analysis of the ability of Waldo Lake to handle multiple uses be performed. If there are established real conflicts with seaplanes on Waldo Lake, alternatives that would solve those specific problems can then be considered.

CONCLUSION

The Columbia Seaplane Pilots Association opposes the rule as proposed, and requests that existing State of Oregon law as written in ORS 835.200, which requires cooperation between the State Aviation Board and the Oregon State Marine Board, be utilized to determine any prohibitions or operational rules for seaplanes on Waldo Lake.

Respectfully submitted,

Columbia Seaplane Pilots Association



Aron Faegre, President

Attachment: Columbia Seaplane Pilots Association Appeal to USFS, dated June 7, 2007, which provides additional information on the reasons that seaplanes should be permitted to continue as a compatible use with needed access to Waldo Lake.