



Oregon

John A. Kitzhaber, MD, Governor

MEASURE: SB 602
EXHIBIT: 10
S ENVIRONMENT & NAT RESOURCES
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March 13, 2013

Senate Committee on Environment and Natural Resources
The Honorable Jackie Dingfelder, Chair
The Honorable Alan Olsen, Vice Chair

RE: Testimony on Senate Bill 602

Dear Committee Chair, Vice Chair and Members,

In 1979 the Oregon Legislature added Waldo Lake to ORS 830.185, a list of waterways with a 10 MPH speed restriction. In 1989, Waldo Lake was designated in ORS 390.826 as a State Scenic Waterway and is the only lake in Oregon with this designation. ORS 830.175(3) gives the Marine Board the authority to make special regulations related to the operation of boats on state scenic waterways.

In November of 2009, the Marine Board entered into a Memorandum of Understanding (MOU) with the Department of State Lands and the U.S. Forest Service in which the Marine Board agreed to initiate rulemaking with the goal of adopting standards set forth in the MOU, specifically that:

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 government 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.

The Marine Board adopted rules in January of 2010 that mirrored the MOU language after a lengthy public input process.

A Petition for Judicial Review of Administrative Rule was filed In March of 2011 which asserted that the Marine Board did not have authority to promulgate these rules and that the Marine Board failed to follow certain procedural guidelines with respect to the rulemaking process. The Marine Board reopened the rule in 2011 to address the perceived procedural irregularities. That process included working with the Aviation Board to identify common ground for moving forward rulemaking with regard to seaplanes on Waldo Lake. Marine Board and Aviation Board statutes require "cooperation" between the two boards when adopting rules for seaplanes. Seaplanes are considered in flight when taking off and landing, which falls under the jurisdiction of the Aviation Board, and they are considered boats after the, "end of a normal power-off landing", and until, "...a seaplane starts its takeoff run". Therefore, any rules regarding landing of a seaplane require cooperation between the two Boards.



On April 6, 2012, in a public meeting held in Portland, OR representatives from the two Boards met to determine what regulation options were possible with seaplanes on Waldo Lake. The Aviation Board was willing to look at regulations for seaplane operation on Waldo Lake, however; options to restrict seaplanes or establishing alternate landing days were not acceptable alternatives in which cooperation could be achieved.

During the April 2012 rulemaking process, the Marine Board received 4,108 written comments in favor of the motorized ban, and 306 in favor of full or partial repeal of the ban. A public hearing and special Board meeting was held in Springfield, OR on April 10, 2012. At the conclusion of the public hearing, the Board voted 3-2 in favor of a motorized ban. Since cooperation had not been achieved with the Aviation Board to include a ban on seaplanes, the Marine Board asked the Aviation Board to initiate their own rulemaking, with the understanding that the Marine Board's position was that the Aviation Board move forward with a ban on seaplanes on Waldo Lake. The Marine Board's adopted administrative rule language states:

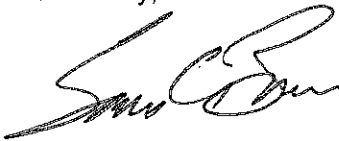
Use of internal combustion motors in boats operating on Waldo Lake is prohibited year round. Official use of internal combustion motors in watercraft operated on Waldo Lake by local, state or federal government officials or agents is allowed for the following activities: search and rescue, law enforcement 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 Waldo Lake. This rule does not apply to seaplanes on Waldo Lake. (OAR 250-020-0221(10)) and (OAR 250-030-0030 (4))

At the Aviation Board rule hearing held in Springfield, OR on January 31, 2013, the Marine Board testified in support of a ban on seaplanes landing on Waldo Lake to reflect its own ban on motorboats.

In keeping with the Marine Board's rulemaking which established a prohibition of internal combustion motors on Waldo Lake, and the Board's position that seaplanes should be banned as well, we are supportive of SB 602, if amended to allow electric motors on the lake.

I am happy to answer any questions that you have.

Sincerely,



Scott Brewen, Director