

GUEST VIEWPOINT: Waldo motor ban a disgrace to the democratic process

By Paul Donheffner

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It's time for some truth about the decision to ban gas motors on Waldo Lake. As the former state marine director, I think the public deserves to know how this decision was really made.

The ban was decided upon long before the Marine Board met on Jan. 14. I was called to a meeting with the governor's office on Aug. 19, 2009, and told by Michael Carrier, the governor's natural resources adviser, that "the governor wants the Marine Board to ban motors on Waldo, as soon as possible."

Since our agency had opposed the U.S. Forest Service's proposed bans for years and had, in fact, appealed the most recent Forest Service decision to ban gas motors, I asked if we could meet with the governor to discuss this.

Carrier became angry and yelled at me that a meeting with the governor was out of the question, not even possible. So no meaningful discussion could occur. I was told to get it done, no questions asked, and include floatplanes in the ban.

Then I asked if the governor would be sending us a letter asking to initiate rulemaking. I thought Carrier would explode. He also brushed off the inconsistency between the state law that says speeds on the lake are limited to 10 mph, and a proposed rule that says no motors.

It didn't matter. The fix was in, from that minute forward. I got it.

Following the meeting, the governor's office directed the Department of Justice to prepare the memorandum of understanding that held the board's feet to the fire to adopt the rule. The memorandum dictated verbatim the rule language we had to use.

To suggest that the agency was free to consider public input and make a decision based on the facts is a joke. The deal was done; there was absolutely no wiggle room once the memorandum was final. Justice even edited the final staff report to be sure it was on script.

Next, I had to conduct two public hearings, and ask for public comments on the "proposed" rule. This was the biggest charade I've ever had to carry out in my public life. Good citizens spent time and energy to convey their sincere and heartfelt input for and against, to no avail. They couldn't change what was already decided.

I lost many nights of sleep over this, which went against everything I've ever worked for. It was a failure of the democratic rulemaking process, and of Oregon's administrative rule process. The people who feel good about the board's decision to ban motors should take pause, knowing they won for the wrong reasons. As I learned, this end justified the means, no matter what the public or the facts might tell you.

Another truth is that everyone loves Waldo Lake. Whether you like to paddle, sail, hike or putter about in a small boat, it is abundantly clear that everyone who uses the lake loves it and respects it as a special place.

The real question facing the Marine Board was this: How do you protect a special place while allowing the people who love it to continue to do so respectfully? A ban on motors is one answer, but it serves only one set of users.

A better answer, one advocated by the Marine Board for years but rejected by the Forest Service (and Gov. Ted Kulongoski), was to limit motors to clean, quiet four-stroke engines, perhaps with a horsepower limit of 25. This would have allowed sailboats (imagine clean, sustainable wind power) and others who love the lake but don't want to, or can't, paddle to also share its beauty while keeping it clean and quiet. It's big enough to share just a little.

The Oregon Legislature has allowed motors (at speeds not to exceed 10 mph), yet Oregonians have a coerced agency decision to ban motors. Is the contradiction between a 10 mph speed limit (set by law) and a ban on gas motors (set by rule) lost on everyone?

The Marine Board's decision was the wrong answer, made worse by the fact that public input and the rule process were circumvented to achieve the governor's agenda. That's not the kind of legacy I would want to leave as governor, even if I don't want motors.

Within days of the Waldo decision, I was forced by the governor's office to resign from temporary duty after a 32-year career at the Marine Board. No explanation. No reason why.

If you believe the Waldo Lake decision was fair, right and just, you're living in a fairy tale. Don't look behind the curtain. The truth isn't very pretty in this chapter from Oz.

The next time you're asked to comment on any agency's "proposed" decision, remember how fair and impartial the Waldo decision was, and how much agencies really "value your input." If you weren't cynical before, take the lesson of Waldo Lake to heart.

Paul Donheffner was the state marine director from 1984 to 2010. In January he received the U.S. Coast Guard Meritorious Public Service Award for his efforts in the field of boating safety and the improvement of recreational boating nationwide.