REGULATORY & LEGAL YEAR IN REVIEW
2019 Annual Report
REGULATORY

In 2019, OFB staff worked to protect the interests of Oregon’s farmers and ranchers in a time of complicated state and federal regulation.

At a glance, OFB submitted nearly 50 substantive comment letters to state and federal agencies, sat on numerous rulemaking advisory committees, led coalitions, worked cooperatively with agencies, and effectively advanced the position of Oregon agriculture across nearly every area of public policy.

ENDANGEROSED SPECIES ACT & WILDLIFE

Oregon Wolf Plan
Through much of this year, OFB participated in the five-year review of the Oregon Wolf Plan through the Oregon Department of Fish and Wildlife (ODFW). The facilitated process concluded with the environmental groups walking away from the table, and release of a plan that – while not nearly what the ag community wanted – was the best possible outcome for farmers and ranchers. OFB testified and submitted comments emphasizing the need for active management of wolves in Oregon.

Federal Wolf Delisting
Earlier this year, the United States Fish and Wildlife Service (FWS) provided notice that it was delisting gray wolves on the west-side, which would remove the listing division we have in Oregon. OFB submitted detailed substantive comments supporting the delisting decision and urging the agency to return management of wolves to the state.

ESA Listing of the Franklins Bumblebee
OFB submitted joint comments with Oregonians for Food & Shelter (OFS) in opposition to the potential listing of the Franklins Bumblebee, which is a bee found only in a small portion of Oregon and which scientists believe to already be extinct.

Deschutes Habitat Conservation Plan
The National Marine Fisheries Service (NMFS) and FWS is in the process of approving a Habitat Conservation Plan (HCP) for the spotted frog covering irrigation district operations in Central Oregon. OFB submitted comment supporting the HCP and opposing the additional mitigation requirements sought by environmental groups.

Oregon Conservation and Recreation Fund
OFB testified and submitted comments regarding the state’s creation of a new “conservation and recreation fund” that was created within the ODFW during the 2019 legislative session. OFB expressed our concern about a lack of landowner engagement around the creation of the fund and the need for strong agricultural representation on the advisory committee.
Oregon Lamprey Plan
OFB recently submitted comments opposing a proposed plan for lamprey recovery that targeted agricultural water use and water quality without any data supporting the assumptions made in the plan.

Marten Harvest Rule
OFB joined a coalition to oppose the banning of trapping the Humboldt Marten on the Oregon Coast due to the precedent it would set for wildlife management. The Oregon Fish and Wildlife Commission was petitioned to ban all trapping of the Marten, which would have had unintended consequences for forest managers. ODFW staff had originally proposed only banning trapping in the Oregon Dunes National Recreation Area. Unfortunately, the ODFW Commission adopted the original petition to close all Marten trapping. OFB submitted testimony on this issue.

Elk Pilot Program
ODFW responded to efforts from OFB and other coalition partners during the 2019 legislative session to address the statewide elk population crisis. The crop loss endured to farmers by elk on private land is an increasing financial burden farming that ranching families cannot afford. ODFW proposed a new pilot program to allow private landowners easier access to hunting tags on private lands with an extended season. OFB supported the program to help provide farmers with another tool to choose from to help reduce elk damage. OFB submitted testimony on this issue.

Fisher Listing
In November, the U.S. Fish and Wildlife Service notified the public of changes to their proposed rule to list the West Coast Distinct Population Segment of fisher as a threatened species under the Endangered Species Act. OFB submitted comments opposing the listing and highlighting the potential impact the changes would have on farmers and small woodland owners who share their land with fisher.

Marbled Murrelet Listing
In June 2016, a number of environmental groups petitioned the Oregon Fish and Wildlife Commission “uplist” the Marbled Murrelet from threatened to endangered under the Oregon Endangered Species Act. OFB submitted comments opposing the reclassification because best available science indicates that the Marbled Murrelet’s population and habitat are actually increasing. In June 2018, the Commission declined to reclassify the Marbled Murrelet as state-endangered.

LAND USE

Solar on High Value Farmland
In early 2019, OFB participated in a rulemaking advisory committee (RAC), testified, and submitted comments on DLCD’s rules regarding siting solar panels on high value farmland. DLCD’s rules prohibit solar on Class I, Class II, Prime, and Unique soils. OFB supported the rules, but encouraged DLCD to expand the prohibition to other productive farmland outside of those soil types.
**DLCD Policy Priorities**
Recently, DLCD submitted their 2019-2021 priority policies for public comment, which included actions around climate change, transportation planning, housing, and other needed rulemakings. OFB met with DLCD staff to understand the potential impacts to agriculture and submitted written comments weighing in on these proposed policies and expressing concerns about the climate proposal.

**Green Energy Corridor**
OFB participated in a rulemaking advisory committee regarding the Umatilla/Morrow Green Energy Corridor Rulemaking. The rules are designed to allow local decision makers in Morrow and Umatilla Counties to designate a corridor for the purpose of siting new overhead electrical transmission lines. OFB has participated in the RAC to ensure that the rules are written to avoid impacts to valuable farmland and will be submitting comments on the final rules.

**Historic Register Process**
OFB submitted comments on a rulemaking altering the process to list sites as historic under the federal historic district process. This process is important in Oregon because a historic listing can have significant land use consequences for landowners. OFB also commented on a specific proposed historic designation in Coos County that would have severely impacted agriculture and forestry landowners in the County.

**LABOR & EMPLOYMENT**

**Manganese PEL**
For the past two years, OFB has participated in a work group regarding exposure limits and required safety equipment for manganese exposure in the workplace. OFB has continually advocated in the work group and in written comments for requiring reasonable safety equipment for farmers who only do intermittent welding on farm.

**PRODUCTION ISSUES**

**Healthy Products**
In October, DOJ announced a potential rule which would make it an unfair and deceptive practice for a seller of a good to make a representation about a health benefit of the good without having scientific evidence to base the representation on. OFB had major concerns about the potential implication of the rule for produce growers, farm stands, as well as producers of hemp and marijuana. OFB submitted substantive comments addressing concerns with the rule language.

**Canola Production Rules**
Through much of this year, OFB participated in a rulemaking process at the Oregon Department of Agriculture about canola growing restrictions. OFB closely participated in the process and submitted comments on purposed rules. However, SB 885 was passed and extended the 500-acre limitation in the Willamette Valley until 2023, which negated the proposed rules.

**Oregon Bee Project Grant**
OFB submitted a letter of support for Oregon State University’s Bee Project’s application for a federal grant. OFB was supportive of legislation in Oregon back in 2015 that initiated the Oregon Bee Project in 2017. The Oregon Bee Project is a cooperative effort between the ODA, OSU Extension Service, and a diverse set of stakeholders who are actively engaged in caring for our bees.
PUBLIC LANDS

Wilderness Characteristics Inventory
The Vale District Bureau of Land Management (BLM) is working towards updating its Southeastern Oregon Resource Management Plan. Through that process, it is also seeking to expand wilderness designations across 4.6 million acres of public land in Malheur, Grant, Baker, and Harney Counties. BLM has identified 76 units in Malheur and Harney as having wilderness characteristics. OFB and the Oregon Cattlemen’s Association worked with WRLC to submit comments on the Plan, opposing the inventory process and errors with each of the identified units.

NEPA Rulemaking
OFB submitted comments supporting the U.S. Forest Service’s new rules improving the process for review under the National Environmental Policy Act (NEPA) for forest and grazing management on U.S. Forest Service lands. OFB commented supporting the improvements and seeking additional changes to make grazing and forestry management easier for ranchers and forester who rely on public lands.

WATER QUALITY

Willamette Mercury TMDL
OFB actively engaged in analyzing Oregon Department of Environmental Quality’s (DEQ) Total Maximum Daily Load (TMDL) for mercury pollution in the Willamette. We hired an independent consultant to conduct an in-depth analysis of DEQ’s modelling, and submitted substantive comments on the TMDL, which has been recently rejected by the EPA. This TMDL is important because DEQ is seeking an 88% reduction of Mercury loading in the Willamette system, with the vast majority of that coming from nonpoint sources, including agriculture. OFB, Oregon Forest & Industries Council and Oregon Association of Nurseries submitted joint comments on the TMDL.

Integrated Report
DEQ has been working on its first comprehensive update of its water quality listing methodology since 2006. The state did a statewide data call, and updated its methodologies for determining how to measure whether a waterbody has exceeded a water quality standard. Because of how they listed watersheds, the report indicates a significant increase in stream miles listed as impaired since the last report, many without data to support those listings. OFB has hired a technical expert to help us review the methodology and prepare comments for report, and has been pushing an action alert for members to write in on the report.

WOTUS Rulemaking
OFB drafted and submitted comprehensive, Oregon-specific comments on the WOTUS rulemaking, particularly focusing on the treatment of intermittent waterways and ditches.

Hells Canyon Hydroelectrical Complex 401 Certification
In May, the Hells Canyon Hydroelectrical Complex was granted 401 Certification by ODEQ. In order to receive the certification, Idaho Power Company (IPC) was required to take certain measures to comply with the
Snake River-Hells Canyon TMDL temperature load allocation. As a solution, IPC and DEQ agreed to create and implement water quality trading programs where IPC pays upstream landowners to implement water quality improvement projects on their private land. OFB had major concerns about the language of the settlement agreement between Idaho Power Company and DEQ, and worked with the parties to amend the settlement agreement to ensure that the programs are entirely voluntary for any participating landowner. OFB also submitted comments on the certification in general.

**Willamette Mercury Variance**

OFB, Oregon Forest & Industries Council and Oregon Association of Nurseries submitted comments objecting to DEQ’s variance that would have allowed points sources to deviate from the Willamette Mercury TMDL by targeting greater reductions from non-point sources. OFB supports the point sources receiving the necessary variance, but not at the expense of non-point source regulations.

**Klamath Temperature TMDL**

OFB joined with the Oregon Water Resources Congress to submit comment objecting to DEQ’s creation of a temperature TMDL for the Klamath Basin that would have targeted changes to water deliveries to meet its reduction targets and created other significant burdens for landowners.

**Irrigation District Pesticide General Permit**

OFB and OFS submitted joint comments expressing concerns with a number of provisions in a pesticide general permit DEQ issued earlier this year covering pesticide and herbicide applications by irrigation districts in and around waterways.

**WATER QUANTITY**

**Willamette Reallocation**

OFB has been continuing to work very closely on the Willamette Reallocation process. Since submitting their final demand to the Corps, the Corps has taken over the process and developed their tentatively selected plan (TSP), which ignored many of ODA and agricultural stakeholders’ recommendations. We have been engaging with our congressional offices, and working with partners and agencies to try to increase our agricultural allocation beyond the 327,000 acre feet proposed to be allocated, and trying to figure out if there can be certainty with this number given the overarching operation of the Endangered Species Act.

**Willamette System EIS**

The Corps is working on a comprehensive review of the Willamette System operations, specifically looking at how much water is stored and how the system is operated. OFB submitted comments expressing the need for the system to continue to be managed for flood control and irrigation purposes, not just for fisheries benefits.
Detroit Dam EIS
The Corps is proposing construction of a temperature control tower and a downstream fish passage facility to enhance fish passage through the Detroit Dam. OFB submitted comments on the draft EIS advocating for the preferred construction alternative, which would include no drawdown and reduce the impact to agriculture and economy.

Instream Water Rights
Since February, ODFW has applied for instream water rights along the North Coast. We provided ODFW feedback on potential conditions statewide for instream water rights as they work on moving forward with rights around the state. This process has been a priority for OFB because instream water rights can have drastic effects on water management for irrigation, particularly as irrigated agriculture changes over time.

Reservations
OFB has been leading the charge to get ODA to pursue additional water reservations in key basins around the state as new instream water rights are filed in those basins.

Klamath Ground-Surface Connection Rulemaking
Earlier this year, OWRD initiated a rulemaking around ground-surface water connection in the Klamath. OFB submitted comments on the rules and assisted member, Lyndon Kerns, on the rulemaking advisory committee.

WETLANDS & FLOODPLAINS
FEMA
In 2018, FEMA announced that they would be adopting a new compliance program that would have essentially required documentation of compliance with the NFIP for all development, even that which has historically not been regulated and much of which includes agricultural activities. We submitted a letter on FEMA’s guidance, and also raised this issue in our regulatory reform letter regarding FEMA. We are working with FEMA and other state farm bureaus to ensure that FEMA does not start regulating agriculture operations.

LEGAL

In 2019, OFB was able to successfully advance the policies of Oregon’s farmers and ranchers in the courts.

With two in house attorneys, OFB was able to draft and file numerous amicus briefs for LUBA, the Court of Appeals, and the Oregon Supreme Court, which weighed in on key policy issues impacting growers statewide. With help from key partners in the advocacy community, OFB was also able to intervene in a number of high-profile federal lawsuits.

Solar Supreme Court Amicus Brief
In this case, OFB argued against the siting of a large-scale solar facility on crucial high value irrigated soils in Jackson. OFB
submitted and amicus brief before the Oregon Supreme Court advocating for the protection of agricultural lands under Statewide Planning Goal 3. After briefs were filed, the case was dismissed as moot because the solar facility company swiftly abandoned the project.

**Douglas County LUBA Amicus Brief**
OFB submitted an amicus brief in conjunction with Douglas County Farm Bureau challenging the resignation of over 20,000 acres of productive agricultural lands Douglas County. OFB felt it was important to weigh on the case because it sent a strong message to counties that they must conduct their Goal 3 & 4 analysis properly with consultation from the local agricultural community. In a favorable outcome, LUBA remanded the decision.

**Yamhill County LUBA Amicus Brief**
OFB submitted an amicus brief in conjunction with Yamhill County Farm Bureau challenging the siting of the Yamhelas Westsider Trail through productive farmland. OFB weighed in on the case because Yamhill County had not done a proper interpretation of the farm impacts test, which protects agricultural operations from non-farm uses. In a favorable outcome, LUBA remanded the decision.

**Justice the Horse Amicus Brief**
OFB submitted a joint amicus brief with OCA and ODFA case of Justice the Horse. In this case, the Animal Legal Defense Fund brought a suit in Justice the horse’s own name against his former owner, seeking damages for past abuse. The goal of the lawsuit is to grant animals legal personhood. OFB found it incredibly important to weigh in on this case because the precedent it could set if successful would be detrimental for the livestock industry and our legal system.

**Hammond Preliminary Injunction**
OFB submitted two amicus briefs regarding a challenge to Hammond Ranches’ proposed grazing permit renewal by a number of environmental groups. The groups were effectively arguing that a permit renewal cannot occur under an expedited process after the adoption of the sage-grouse resource management plan amendments. OFB opposed this interpretation and submitted two amicus briefs (one jointly with OCA) supporting the livestock industry’s ability to continue to use an expedited permitting process.

**Streaked Horned Lark**
OFB, the Oregon Seed Council, and the American Farm Bureau intervened in a lawsuit filed by a number of environmental groups to protect a listing decision that provides take protection for farmers and ranchers. The Court has remanded the listing decision to be updated with new data and information.

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