Dear Representatives

Here are some comments for the March 26 hearing on HB 2715.

I have also attached some relevant documents.

HB 2715 would eliminate once and for all the confusion that arises when trying to make sense of Oregon's Right to Farm Law ORS30.93X. That law had a clear legislative intent to protect farmers from suburban encroachment. It was never designed to deal with farmer to farmer disputes over the crops they can or want to grow. Claiming it gives an inviolable legal and court enforceable shield to GMO seed growers to contaminate and ruin their neighboring organic seed growers is a bad interpretation of that law.

Now consider the case of Jackson County, where a foreign corporation (who can't even grow GMOs on their own country) in likely violation of its USDA APHIS issued permits for growing its GMO sugar beets for seed production at least 4 miles from other seed growers, instead chose to grow them checkerboard all over the County. In response thousands of dollars of lucrative organic beet and chard seeds which can cross pollinate with sugar beet traits were destroyed in order to protect markets, reputations, and certifications. Now that those sugar beets are deregulated they can grow them legally anywhere in the County, neighbors be damned. Needless to say those actions set off a firestorm of concern that you are addressing now in the legislature. Ask yourself, which party has the right to farm in that scenario? ORS30.935 sheds little light on the answer

HB2715 would eliminate confusion by making it clear that Counties could regulate agricultural affairs as they see fit based on a local assessment of the problem. Counties would not have to fear lawsuits leveraging the vagueness of the Right to Farm law improperly applied as threatened by those who support state preemption (SB 633 and its mirror bill HB 3192.) As they say, Counties can't afford the inevitable lawsuits. Well they shouldn't have to face that Faustian bargain. HB 2715 removes that risk and supports the notion that local control is the best solution for local problems.

Let's review some precedents for successful local ordinances.

Umatilla County resolved disputes locally between organic and conventional apple growers with its CHAPTER 100: CONTROL OF INSECT PESTS AND DISEASES IN FRUIT TREES AND VINES ordinance. That ordinance still stands yet it flies in the face of ORS30.935 by declaring "Host trees, host plants, orchards and fruit kept or disposed of in violation of this chapter shall be considered to be a public nuisance, and may be abated at the discretion of the County by employing any treatment, removal, disposal or other control method set forth in this chapter, Umatilla County Code of Ordinances, and Oregon State Statutes. (Ord. 2007-11, passed 12-19-2007)" Yet seven years after passage, Oregonians for Food and Shelter and the Farm Bureau don't seem to be bothered and the apple industry in Oregon has not collapsed because Umatilla County solved a real problem.

In 2002 , Jackson County also used a local agricultural ordinance to solve a problem with abandoned pear orchards. Section 630 of the Jackson County Codes states "It is the intent and purpose of this Ordinance to prevent the build-up and spread of injurious plant and tree pests from tree to tree and orchard to orchard; particularly from areas not properly treated, or from areas untreated or abandoned, to commercial or semi-commercial trees; to offer alternative control measures; to encourage property owners to implement control measures; and to recoup expenses incurred by Jackson County in treatment of pests due to noncooperation or non-action of property owners, or any tenant, occupant, lessee or person in possession of subject property. This Ordinance shall be known as the "Jackson County Pest Control Ordinance." The Farm Bureau and OFS haven't fussed about that either, despite it being a local ordinance.

Now comes Measure 15-119 in Jackson County, (copy attached) a citizens imitative with the support of 6700 petitioners to solve a problem of genetic contamination. Just as abandoned pear trees are a threat to the pear industry, to a certified organic farmer or seed grower, GMO pollen is no different than a pear pest, it will ruin their business. That business is an important part of the local economy and the citizens of Jackson County think the issue should be put to a vote. If it passes they don't want the GMO industry to take away that right to control their local economy. HB2715 supports that right to local government. I have also attached a list of over **100 farms** on the Rogue and Applegate valleys that have signed written statements that they support a GMO crop ban in the County. Many of them are Farm Bureau members too. They have also been joined by 250 businesses and organizations that have done the same. Ask the Farm Bureau how many farms in Jackson County they actually represent?

If you read Measure 15-119 (attached) which adds section 635 to Jackson County Code you will find that it was modeled after the EXISTING section 630, nearly verbatim in many sections.

Will a by-product of SB633 and HB3192 mean that the existing Umatilla and Jackson County ordinances will be held illegitimate?

Finally here is some more discussion on the applicability of ORS30.935 on Measure 15-199.

INTENT
The intent of the Right to Farm law is expressed in the Legislative Findings section 30.933. The law was clearly written to protect farmers from suburban encroachment. It was not written to resolve farmer to farmer disputes or to be a shield for GMO farmers to adversely affect other farmers, certified organic or otherwise

Parts B and C say (b) T*he expansion of residential and urban uses on and near lands zoned or used for agriculture or production of forest products may give rise to conflicts between resource and nonresource activities.(c) In the interest of the continued welfare*

of the state, farming and forest practices must be protected from legal actions that may be intended to limit, or have the effect of limiting, farming and forest practices.

If the intent of the law has any bearing on its applicability, then 30.935 may not apply to the case of a County GMO ban.

NUISANCE AND TRESPASS

The "meat" of the law is section 30.935 30.935[1] entitled Prohibition on local laws that make farm practice a nuisance or trespass

Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to that farm practice for which no action or claim is allowed under ORS 30.936 (Immunity from private action based on farming or forest practice on certain lands) or 30.937 (Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use).

If you read our ordinance, 15-119 (one of the attachments) you will not find any reference to nuisance or trespass within it.

PUBLIC NUISANCE DEFINED

"As used in ORS 30.930 (Definitions for ORS 30.930 to 30.947) to 30.947 (Effect of siting of destination resorts or other nonfarm or nonforest uses), nuisance or trespass includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances." measure 15-119 does not have any restrictions on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides. The definition of "crop production substances" might possibly include GMO seeds, but then it might not. It will be up to a judge to sort that one out. The law is silent to that. When viewed in light of the requirement for farm practices to be "done in a reasonable and prudent manner" our opinion is that the Right to Farm law does not preclude a County ban on the propagation, cultivating, raising or growing of genetically engineered crops in order to protect the health safety and welfare of its citizens.

THERE IS MINIMAL CASE LAW TO HELP DECIDE IF RIGHT TO FARM PROTECTS GMO GROWERS

There is minimal case law for ORS 30.935. Therefore our opinion is that the meaning and application of that law to a local ban on planting genetically engineered crops is an undecided and an open legal subject.

Our necessarily limited research could only find two cases even related.'

- Hood River County v. Mazzara where a judge used ORS 30.935 to reverse a finding that a barking dog was protected under ORS 30.935 and that the Hood River public nuisance ordinance could not apply

- Taber vs. Multnomah County, 11 Or LUBA 127 having to do with golf courses and farming and it gets involved with ORS 30.935, but I'm not competent to interpret that case which was more about land use conflicts and may be outdated by now.

PREREQUISITES

30.0933 2(a) states *Farming practices on lands zoned for farm use must be protected.* It does not differentiate between organic and conventional farm methods. Our opinion is that the protection should be equally applied. Planting genetically engineered crops with their inevitable gene drift threatens the very heart of business plans for certified organic farmers and those who choose to grow and market food free of genetic engineered traits. The converse is not the case. No farmer that I know of markets his crop as genetically engineered. In fact the bio-tech agricultural industry is spending millions of dollars to continue to hide the fact of or presence of GMOs in our food. Restricting GMO crops here does not threaten anyone's livelihood. There are plenty of conventional alternatives available.

30.930 Definitions (2) (e) say that farming practice must, among other things, be done in a **reasonable and prudent** manner.
Our opinion is that a farming practice of one farmer that threatens the business of a neighboring farmer (or in the case of pollen drift a neighbor miles away) is neither reasonable nor prudent. When Steve Fry of Fry Family farms and Chuck Burr of Restoration farms have to plow under seed crops worth thousands of dollars that is neither reasonable nor prudent.

==========
Brian Comnes
Ashland, OR
==========