March 19, 2013

Testimony in Support of HB 2427 – Protecting the Willamette Valley from Canola

Chair Witt and Members of the House Agriculture and Natural Resources Committee:

For the record, my name is Nellie McAdams and I am a family farmer in Gaston, Oregon, and the Next Generation Program Director for Friends of Family Farmers. Our Executive Director and Policy Director, Ivan Maluski, submitted our official testimony, but I would also like to submit testimony as a concerned citizen.

First, I wanted to address Oregon Department of Agriculture Director Katy Coba's assertion during today's morning hearing that ODA cannot create control areas based on market concerns. I point the Committee's attention to ODA's governing statute for control areas, ORS 570.405, which authorizes the Department to create control districts "for the general protection of the horticultural, agricultural, or forest *industries*..." The common interpretation of the word "industry" includes market-based concerns. This interpretation seems logical, because it would be nonsensical for ODA to control a plant simply for its own sake and not for the effect it has on the financial viability of Oregon's agricultural industry.

Director Coba stated today that the Department is not aware of the fiscal impact of this rule. The Department has done no financial cost-benefit analysis on the rule, however, the anticipated costs include the complete destruction of a $50 million dollar specialty seed industry and great damage to the $32 million clover and the $30 million fresh vegetable industries. The only benefit is that some growers could make an aggregate of $1-2 million/year on canola instead of on a different rotational crop. (NOTE: Clover growers are concerned because their seed lots will be rejected if they are contaminated with canola seed, which is the same size and weight as clover seed and impossible to sort out.)

If my interpretation of the statute is correct and the word "industries" does in fact authorize ODA to make decisions based on market concerns, then the Department is not acting in compliance with statute and it would seem appropriate for the Legislature to provide clarity. If ODA's interpretation of the statute *is* correct and ODA can*not* create control areas based on market concerns, then the Legislature is the only body that *could possibly* act to protect these industries from financial ruin, and I respectfully ask you and your colleagues to do so.

Secondly, it appears that ODA is putting the cart before the horse by allowing canola in the Willamette Valley without first commissioning, conducting, or analyzing research to show that this decision would not cause permanent, irreparable damage. ODA had no science-based reason for this abrupt rule change, as there has been no new science. Since the Department is not basing its decision upon clear scientific findings, and will not (or cannot) base its decision upon market concerns, it is the responsibility of the Legislature to give the Department clear guidance.

There have been no research proposals for alternative rotation crops that do not threaten neighboring industry. Just this year, Oregon State University received a research grant from the USDA for $349,000 for research on the use of camelina as an aviation biofuel. There are other possible rotation crops. If the existing rotation crops are not currently highly lucrative, then ODA's existing Marketing Division may help increase their profitability. With well-directed research and marketing, there can be a win-win situation for growers in search of a dicot rotational crop, and members of the specialty seed, fresh vegetable, and clover industries.

In addition to not securing research funding before promulgating a rule, ODA has also not requested funding through the Governor's proposed 2013-2015 budget to implement, monitor, or enforce the new rule. It is unlike that fees that the fees that ODA may charge prospective canola growers would cover the agency's actual costs and the potential need to defend the rule, and/or violations of it, in court.

The amount of administration that the 2013 rule would require is, in fact, unknown, because the rule does not place an absolute cap of canola production at 2,500 acres. The second section 4 (type in the rule) of the Willamette Seed Protection Area rule allows for an unlimited number of one-year variances "near" the boundary of the protected area that do not count towards the 2,500 acreage cap. It is not clear how near "near" is, nor how much acreage could be planted in canola under a variance.

In regards to the 2,500 acreage cap, it is unclear how ODA selected this number, but, from what I understand, it is not enough to feed a crushing facility. The risks far outweigh any possible benefits from allowing this relatively small amount of canola to be grown in this very vulnerable region. This also raises the question of whether there will be subsequent amendments to the current rule that would increase the acreage cap to 10,000 acres next year or 100,000 acres in a decade. As an administrative rule, the protection against canola in the Willamette Valley is very vulnerable to change. A law would not be as malleable and could provide the certainty that specialty farmers, and their customers, need.

The Department of Agriculture has pointed to the "Big Tent" theory as a justification for its rule change, This is the theory that all types of agriculture can coexist and benefit the state. However, 1) canola cannot coexist with vegetable seed production, and is very harmful to clover seed and fresh vegetable production, and 2) this theory need not necessarily mean that every area of the state should grow every kind of crop. Canola can be grown in most of Oregon, but it should not be grown in the very region where it would permanently damage, and perhaps eliminate, existing and thriving agricultural industries; this would cause a net loss of agricultural diversity in Oregon.

The Department has spoken about its efforts to achieve compromise, however, the Department already was successful at achieving compromise. That compromise was the 2009 rule, which used extensive consensus-building to establish where canola could and could not be grown. There has been no additional information or significant changes of circumstances since 2009 to explain ODA's abrupt change of tack. It should also be noted that, while the 2009 rule required a rule review if no petitions for review had been filed by the end of 2012, the rule did *not* require ODA to *amend* the rule at any time.

In conclusion, I believe that this is a question for the Legislature. If the Department of Agriculture cannot or will not act to protect existing industry and a very rare agricultural environment, then this guarantee of protection must fall on our lawmakers. The Washington Legislature acted to legislatively protect high value seed production areas, and I believe that Oregon should too.

Thank you,

Nellie L. McAdams
iFarm Program Director
Friends of Family Farmers