

## *Pacific Rainforest Wildlife Guardians*

Dear Committee members,

**This tacky proposed legislation is a disgrace to the State of Oregon and an insult to its voters and citizens. Herein are excerpts from case law that gives it a Big Thumbs Down.**

**“Key Factors.** Finally, in determining whether a state interest is sufficient to justify home rule preemption, the court considers a variety of factors. These factors are intended to assist the court in measuring the importance of the state interests against the importance of the local interests in order to make an ad hoc decision as to which law should prevail. These factors include: (1) The need for statewide uniformity of regulation (by Fish and Wildlife Commission); (2) The impact of the measure on individuals living outside the ... (county) (“extraterritorial impact”) (see Wildlife Policy); (3) Historical considerations concerning whether the subject matter is one traditionally governed by state or local government; (state) (4) Whether the ... constitution specifically commits the particular matter to state or local regulation; (Oregon Constitution Article XV 4b Lottery funding for wildlife habitat protection [such as predators limiting elk damage to salmon streams]) and (5) Whether there is a need for governmental cooperation to facilitate the laws concerning the subject matter in question (to prevent the threat of Cougar and other predator extinctions, ruminant disease and starvation from over-population, and damage to forage, trees and crops).”

*City of Northglenn*, 62 P.3d at 156; *City of Commerce City*, 40 P.3d at 1280; *City and County of Denver v. Qwest Corp.*, 18 P.3d at 754-55; *Town of Telluride*, 3 P.3d at 37; *City and County of Denver v. State*, 788 P.2d at 768.

**The county law would conflict with the rest of state law and therefore be preempted by state law along with its exemption. Wildlife is to be managed for the benefit of all Oregonians that no small band of animal cruelty enthusiasts, trophy hunters or species bigots may put asunder. It conflicts with pertinent state law and policy and is preempted by:**

**“ORS 498.002 Wildlife as state property; taking, angling, hunting or trapping in violation of wildlife law or rules prohibited. (1) Wildlife is the property of the state (not counties). No person shall angle for, take, hunt, trap or possess, or assist another in angling for, taking, hunting, trapping or possessing any wildlife in violation of the wildlife laws or of any rule promulgated pursuant thereto.”**

**(2) No person shall angle for, take, hunt or trap, or assist another in angling for, taking, hunting or trapping any wildlife while intentionally violating ORS 164.245 to 164.270 or 498.120. [1973 c.723 §73; 1993 c.440 §1; 2003 c.656 §10]”**

**ORS 496.012 Wildlife policy. It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management: (Exempting individual counties is not in the public interest of the People of the State of Oregon.)**

**(1) To maintain all species of wildlife at optimum levels.**

**(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.**

**(3) To permit an orderly and equitable utilization of available wildlife.**

**(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.**

**(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.**

**(6) To provide optimum recreational benefits.**

**(7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups. [1973 c.723 §6; 1993 c.659 §2; 2001 c.762 §6**

**The exemption for counties that vote to eradicate Cougars and Black Bears using blood hounds or bate is not harmonious with wildlife policy, other laws, or the public interest stated twice by state election initiative.**

**“ORS 498.102 Use of dogs to hunt or track game mammals or birds. (1)**

Any dog that is not wearing a collar with a license number thereon in compliance with ORS 609.100 that is found unlawfully hunting, running or tracking any game mammal or game bird may be killed at such time by any person authorized to enforce the wildlife laws.

(2) If a dog that is found unlawfully hunting, running or tracking any game mammal or game bird is wearing a collar with a license number thereon in compliance with ORS 609.100, the owner of the dog shall be notified by any person authorized to enforce the wildlife laws. If the owner or reputed owner of the dog disclaims ownership of the dog, the dog may be killed at such time by a person authorized to enforce the wildlife laws.

(3) If the owner of a dog has been notified that the dog has been found unlawfully hunting, running or tracking game mammals or game birds and thereafter fails to prevent the dog from unlawfully hunting, running or tracking game mammals or game birds, such dog may be killed by any person authorized to enforce the wildlife laws.

(4) No person shall permit any dog the person owns to unlawfully hunt, run or track any game mammal or game bird. [1973 c.723 §84]”

“If the matter is one of mixed local and statewide concern, home rule provisions and state statutes may coexist when the measures can be harmonized. In the event of a conflict, however, the state statute super-cedes the home rule provision (and it self -destructs). *Trinen*, 53 P.3d at 758; *Qwest Corp.*, 18 P.3d at 754; *Town of Telluride v. Lot Thirty-Four Venture LLC*, 3 P.3d 30, 37 (Colo. 2000); *City and County of Denver v. State*, 788 P.2d at 767.”

**“Totality of the Circumstances.** To determine whether the state’s or a home rule municipality’s rules govern, the court considers the totality of the circumstances to reach a conclusion that a particular subject matter is one of local, statewide, or mixed concern. *City of Commerce City*, 40 P.3d at 1279-80; *Town of Telluride*, 3 P.3d at 37. This analysis involves consideration of both fact and policy, *Qwest Corp.*, 18 P.3d at 37, directed toward weighing the respective state and local interests implicated by law. *Town of Telluride*, 3 P.3d at 37. The determination is ad hoc, taking into consideration the facts of each case. *City and County of Denver v. State*, 788 P.3d at 767-768.”

The facts of convenient Cougar sightings are that ODFW is a professional Cougar live trapper with all the mobile traps and wildlife confinement areas necessary to pull off a scam or 3 each year right as the legislature convenes, in order to get witnesses to testify to you about seeing a Cougar to go with fraudulent testimony by hound hunters wives. Cougars are one of the only wild cats who can be domesticated and actually ride in a car, let out to roam, then be called back to hop in and drive away, just like a dog would. Pro-hound hunting facts are too often tainted. To kill mother cougars leads to sightings of young Cougars who need their mom for 3 years to learn to stay away from humans. Hunting Cougars leads to kittens wandering into towns with broad limbed trees and squirrel feeders. They are not dangerous to humans unless provoked to be defensive.

Please wad up this bill and throw it in the trash. It would never make it through the courts. Why put the state to the needless expense?

Thank you,



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