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February 18, 2015

Senator Chris Edwards  
900 Court Street, NE, S-411  
Salem, OR 97301

Chair Edwards,

Now that HB4040 has been subject to much needed scrutiny in your Committee, I am dismayed that it continues to receive serious consideration. I am sorry I cannot make the trip from Wallowa County, but hope you'll give serious final consideration to four key points before deciding your course of action.

1. The Wolf Plan did not call for delisting wolves. Conservationists have honored their commitments.
2. Proponents of HB4040 passed the bill through the House based on misinformation.
3. HB4040 does not honor the Wolf Plan or the request of the ODFW Commission. The bill picks sides and further deepens divides between stakeholders.
4. HB4040 doubles down on a decision that flew in the face of science, the public, and the law.

**1) The Wolf Plan did not call for delisting wolves at this stage. Conservationists have honored their commitments.**

On no less than six occasions, the Wolf Plan states in plain language wolves *may be considered* for delisting upon reaching Phase II objectives in Eastern Oregon. It did not require it.

Proponents of the bill have only recently changed their position on the Wolf Plan to one of support. Though many compromises were made by stakeholders to win support from the livestock industry, the Oregon Cattlemen's Association strongly condemned the Plan upon its promulgation. Since 2011, there have been at least seven bills introduced that would directly undermine it. As recently as last year - just days before ODFW was set to begin the status review called for in the Plan - proponents of HB4040 introduced a bill (HB3515) to delist wolves and strip ODFW of its authority to consider future relisting. In opposing that bill, conservationists including ODFW defended ODFW's authority under the Plan. We said we would abide by the decision so long as the agency followed the law informed by the best available science.

Conservationists have stood by the compromises in the Wolf Plan made to win support of the Cattlemen and others who ultimately opposed it. We stood by the Plan when it was weakened in 2010. We objected to wolf killing in 2011 due to violations of the Plan and existing law. When a judge agreed and issued an injunction, we immediately reached out to ODFW and engaged in 17 months of negotiations that resulted in a settlement between conservationists, ODFW, and the livestock industry. The agreement was intentionally limited to Phase I and was silent on delisting.

If anyone ever promised wolves *would* be delisted at this time, it was not conservation stakeholders nor was it the plain language of the Wolf Plan itself.

## **2) Wolf Plan proponents passed the bill through the House based on misinformation.**

Given recent events, Oregon policy-makers should be doing everything possible to ensure ethical governance. As HB4040 made its way through the Agriculture Committee to the House floor, several public statements were made by bill sponsors and proponents who stated it was not intended to derail a legal review and that it would not have such an effect. Now that Legislative Counsel has weighed in to the contrary, bill proponents do not refute it.

It is difficult to see the narrative in the House as accidental. At best it was a matter of semantics (“a request for legal review had already been put forward so couldn’t be prevented”). However public statements made in district by the sponsors of the bill, indicate that was the known intent/effect all along. (See attachment).

Other supporters of HB4040 have misrepresented important facts about the Wolf Plan, wolves, other stakeholders, and basic history. That’s no small thing. However, the fundamental concern is over the ethical conduct of legislators and the Oregon legislature. Such misconduct should not be rewarded.

## **3) HB-4040 does not honor the Wolf Plan or the ODFW Commission. It picks sides and deepens divides between stakeholders.**

The Wolf Plan does not call for delisting when moving to Phase II nor does it call for legislative ratification. Upon delisting wolves, the ODFW Commission did not ask for legislative ratification despite the fact that the legislature was on their mind. The Commission proactively asked for legislative help in addressing the very real threat of continued wolf poaching.

Wolves were included by amendment to a poaching bill (HB-4046). However Rep. Barreto - the sponsor of HB4040 - voted against the poaching bill while predicating HB4040 on the notion that he was supporting the Commission. The poaching bill now seems to be in jeopardy.

In the push to delist wolves, ODFW ignored another legal obligation to begin the 5-year review of the Wolf Plan. Conservationists flagged early on that delisting would be a contentious affair and offered to consider standing down on delisting if the agency honored the legal requirement for the Wolf Plan review and ensured important standards would be carried forward. That offer was rebuffed.

The Wolf Plan review will soon be underway and nascent trust between stakeholders has been seriously damaged. While it may seem appealing for some in the legislature to simply weigh in and end the discussion of delisting, doing so by picking sides does not build trust. Rather it further disenfranchises one set of stakeholders while providing catharsis to another. If the legislature simply wanted to demonstrate support for ODFW as bill proponents claim, it could have done so through a resolution rather than statute.

## **4) HB-4040 doubles down on a decision that ignored significant science, violated public trust, and broke the law.**

No one has questioned ODFW’s authority to delist wolves. The request for a legal review of the decision doesn’t even question whether or not the agency got the decision right. What it affirms is that the public has the right to ensure public agencies are accountable to their own laws. In the case of the delisting decision they did not do so.

ODFW made a great number of troubling missteps in pushing a recommendation and decision to delist wolves. Most troubling of all was ignoring significant scientific critiques from dozens of world-renowned scientists. Further, ODFW ignored the legal requirement to subject their analysis to an independent review. For the legislature to double down

on that decision, the wolf delisting process would lower the bar and become the standard by which future delisting decisions could be made.

Public comment and testimony was overwhelmingly in favor of maintaining protections for wolves. It is disturbing that such public involvement has been dismissed by some as too simplistic for consideration.

If HB-4040 becomes law, it sends a message that dozens of scientists, hundreds of citizens testifying, and thousands of public comments, and existing statute can simply be ignored.

**Voting yes on HB-4040 does not simply “ratify” the decision to delist wolves or provide an “ataboy”. It says 25 world-renowned scientists were wrong. It says ODFW followed all proper procedures. It says the opinions of over 10,000 citizens don’t count.**

**Conservationists celebrated when gray whales, bald eagles, and peregrine falcons were delisted. We celebrate that wolf recovery is on the right track and look forward to celebrating an appropriate delisting of wolves.**

**HB-4040 is unnecessary. Whether one likes it or not, wolves are delisted. A legislative declaration of an emergency is not needed to make it so.**

**The Wolf Plan is in place and can be carried out. Wolves in Eastern Oregon are in Phase II. The only practical effect of this divisive legislation is to sidestep the public’s right to hold a public agency accountable to its own laws and further polarize stakeholders by choosing sides against the values of an overwhelming majority of Oregonians.**

**While there are legitimate concerns on all sides of the wolf issue, HB4040 does not address any of them. We urge you to vote no on HB-4040.**

Sincerely,



Robert Klavins  
Enterprise, Oregon  
Northeast Oregon Field Coordinator  
Oregon Wild

Cc: Senate Committee on Environment and Natural Resources  
Senate President Peter Courtney  
Governor Brown  
House Speaker Tina Kotek

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## **Background**

Three conservation organizations have requested a review of the Oregon Fish and Wildlife Commission's controversial 4-2 decision to delist wolves in November, 2015. The primary basis of the legal challenge is that the decision did not satisfy the requirements of ORS 496.176.

In response, Representative Greg Barreto introduced and amended a bill (HB-4040) that states "*The administrative rule amendment adopted by the State Fish and Wildlife Commission on November 9, 2015, to remove *Canis lupus*, commonly known as the gray wolf, from the state lists of threatened species or endangered species established pursuant to ORS 496.172 (2), is ratified as satisfying the elements of ORS 496.176 and approved.*

Since wolves are already delisted, no injunction has been requested, and the Wolf Plan is in effect regardless of the status of wolves, conservationists argued the only practical effect of HB-4040-A would be to sidestep the public's right to hold a government agency (ODFW) accountable to its own laws.

Please note, this memo is a work in progress. We are continuing to work through publicly available materials. Timestamps correspond to video available on the [Oregon Legislative Information System website](#).

## **Misinformation in the House:**

To gain passage of HB-4040 in the House, proponents claim the intent/effect of the bill is not to effect a legal challenge to ODFW's delisting decision.

February 4<sup>th</sup>, House Agriculture & Natural Resources Committee Hearing:

- Rep. Barreto:
  - 13:32: "It [HB4040] does nothing more than shore up the decision by the Fish and Wildlife Commission".
  - 14:21: "Our objective in this is not to usurp the authority of the Commission, it is only to shore up the decision that they have made and to make the plan a workable plan as was written.
- Rep. Witt in response to Rep. Gorsek:
  - 1:52:11: *Gorsek*: The only thing I would say is that I think judicial review is what we have when we disagree. I understand that people who are invested in the wolf plan and want it to go forward, but by having it go to judicial review, that is not a failing on the part of the government, that is actually the government allowing the system to work the way it's intended... We could have a better mediation system that's not so slow and clunky and expensive but the idea is that we do have some place we can go and that's why I think judicial review is so important. **Witt: I agree with you Representative Gorsek, and I have done the utmost to make sure that this bill does not preclude that possibility.**

February 10<sup>th</sup>

- In response to constituents distributing a document to their legislators flagging legal concerns, Rep. Barreto distributed a document stating: "HB 4040-1 contains no language that precludes or prevents judicial review. It ratifies and approves the decision by ODFW Commission to remove *Canis lupus* (grey wolf) from state list of threatened and endangered species."

February 12<sup>th</sup>, House Floor Debate:

- Rep. Barreto:
  - 49:03: “This is where we are right now. The question is, ‘what are we doing in the legislature? Does this basically prevent litigation?’ And this has been a question that has come up from Representative Gorsek and the answer that I have come up with is “no it doesn’t”
- Exchange between Rep. Doherty and Rep. Barreto:
  - 54:00: *Doherty*: ” Is there any legislative intent in this bill to have it be used to influence any part of pending or future litigation? And I’m referring to line 7 page 2 with the words “satisfying the elements” of ORS?” *Barreto*: “Thank you for the question in advance because that was something that I checked into this morning and as far as the question, 7 ‘ratified as satisfying the elements, ‘Ratified’ just means approval affirmed that what the decision came up with. ‘Satisfying the elements’ it basically satisfied the Endangered Species Act as in those statutes, so as far as the motive in that there’s no motive on my part as far as disrupting anything. It’s basically just affirming...the motive is just to affirm what they [ODFW Commission] have come up with they have voted on and decided in order to manage the wolves.

### Not just an accident

Some statements are arguably a matter of semantics. Since a petition requesting legal review had already been filed, it was technically impossible to prevent a legal challenge from being filed. However the intent and understanding of the practical effect of the legislation was made clear by bill sponsors in their districts.

October 30<sup>th</sup>, 2015 Wallowa Chieftain:

*State lawmakers may only introduce two bills each in the upcoming short session, and Sen. Hansell is committed to his two bills on management of wolves and compensation for ranchers suffering wolf predation. He has a third bill related to human safety with regard to wolf conflict on his plate as well.*

*However, if the state Fish and Wildlife Commission withdraws Endangered Species Act protections for wolves during its Nov. 9 meeting, as recommended by the Oregon Department of Fish and Wildlife, Sen. Hansell may be able to switch gears and reintroduce the opt-out bill on cougar hunting.*

...

*Hansell said that if the wolf is delisted animal activist groups most likely will file suit against ODFW and he will have to defend his stance, making it unlikely he will be able to put the cougar hunting ban on his short list of bills to present.*

Public Conference call, February 16, 2016

*Rep. Baretto: "There is some subjective thoughts on that that it [HB4040] would prevent any lawsuit from being filed. But Oregon Wild has already filed a lawsuit on the delisting process. Will this prevent the lawsuit? Well, it won't help it. They can still have their day in court but it should strengthen the argument that the Commission made..."*

*Sen. Hansell: "It puts the Executive and legislative bodies on the same sheet of music and when it goes before the third leg of the milk stool, the judicial, Oregon Wild and others won't be able to say that ODFW did not follow the legislatives and legislators intent in delisting because we will be on the record saying that they did. So it's trying to shore up ODFW's position."*

**In the Senate:**

In response to a request for information on a potential amendment to HB-4040-A, Maureen McGee, Deputy [Legislative Counsel issued a memo](#) clearly stating that “the only legal effect of A-engrossed House Bill 4040 is to validate or cure any real or perceived irregularities in the commission’s application of ORS 496.176 in deciding to delist the gray wolf”. Given that that is the legal claim in the request for judicial review, the request would be rendered moot.

The memo was shared during a hearing in front of the Senate Committee on the Environment and Natural Resources on February 16, 2016. In response to the memo, proponents of HB-4040 did not argue against, and even seemed to embrace the fact that the effect and intent of the bill would be to moot a pending request for legal review.