

Raszka Shelley

From: Rob Klavins <rk@oregonwild.org>
Sent: Sunday, February 21, 2016 11:36 AM
To: Sen Edwards C; Sen Courtney; Reiley Beth
Cc: Brett Brownscombe 2016+; Rep Kotek; SENR Exhibits; Sen Dembrow; Sen Olsen; Sen Prozanski; Sen Whitsett
Subject: HB4040 - addressing questions from 02/18 public hearing
Attachments: AF_Peer_Review_to_Gov_Kate_Brown.pdf; 02_21_2016_HB4040_RK_Oregon_Wild.pdf

Senator Edwards,

Attached please find information following up on unanswered questions and continued misunderstandings/misrepresentations from the most recent public hearing on HB4040. Given that it is a direct follow up to the public hearing, I hope it may be included on the public record for HB4040 and will get appropriate consideration before any future action on the bill, specifically:

- Input from a peer review expert that addresses a concern raised by Senator Olsen.
- Clarification about underlying wildlife policy.
- A response to a question regarding our position on the Wolf Plan.
- Clarification addressing concerns raised by the livestock industry regarding the ramifications of independent judicial review.

As ever, please feel free to be in touch if you have any lingering questions or concerns we can address.

Thank you,
Rob

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Protecting and restoring Oregon's wildlands, wildlife, and waters as an enduring legacy for future generations since 1974.



Re: ODFW's Delisting of Wolves from OESA
February 12, 2016
Governor Brown,

The ODFW's scientific process to justify delisting of wolves was incomplete and flawed. Proposed legislation to "ratify" the decision (HB4040) will further enforce the flaws in this public process and undermine public trust in Oregon's leaders.

For 13 years, I have been managing peer-review processes for scientific journals. As Associate Director of Scientific Journals for a nonprofit scientific society, I am well versed in scientific publishing ethics and peer-review best practices. I am a committee chair and past board member of the Council of Science Editors, and a member of the Committee on Publication Ethics (COPE). I currently serve on a Code of Professional Conduct and Conflict of Interest Policy task force for the Institute of Food Technologists. I've lived in Portland for over 9 years, and this year I attended three ODFW public comment hearings, testifying in support of continued wolf protections at two of them.

I am concerned that ODFW used a deeply flawed and last-minute peer-review that was merely done to minimally satisfy a requirement for an independent review of the science on which the delisting decision was based.

I am also very concerned that HB4040, which is scheduled for vote in the House this week, sets a dangerous precedent for the legislature to legislatively delist wolves, undermining the ODFW's authority as well as the public process and potential for judicial review of the ODFW's decision. The wolf plan is in place; we do not need the legislature to step over the agency's head to try to set ESA policy.

Why, when Russ Morgan's report, "Biological Status Review for the Gray Wolf (*Canis lupus*) in Oregon", was presented in April at the ODFW Commission meeting in Bend, did the Commission wait until October—six months—to *begin* to seek independent review? The report recommended that the Commission begin the delisting process, and according to the rules of the Wolf Plan, such a report must be independently peer-reviewed before delisting can be considered. A typical and appropriate peer-review process takes up to several months. The Commission seems to have done nothing to pursue independent review for months, rushing a review process to completion just days before the rulemaking meeting in November. Worse, the reviews the Commission received were not posted where the public could access them until after the delisting rulemaking meeting began.

The 5 determinations which must be met for delisting to occur, as stated in the Wolf Plan, "must be based upon verifiable scientific information." As defined in the ODFW Administrative Rules, '*Verifiable*' means scientific information reviewed by a scientific peer review panel of outside experts who do not otherwise have a vested interest in the process. (<http://www.dfw.state.or.us/OARs/100.pdf>)

In the world of scientific journals, and, I would argue, according to the state's definition of "verifiable" above, the reviewers and process used by ODFW staff to obtain "independent" review does not pass muster. According to the Committee on Publication Ethics' guide, "Code of Conduct and Best Practice Guidelines for Journal Editors" (http://publicationethics.org/files/Code%20of%20Conduct_2.pdf), peer-review should include:

- ensuring that appropriate reviewers are selected for submissions (i.e. individuals who are able to judge the work and are free from disqualifying competing interests);

- providing a description of peer review processes, with justification provided if there were any important deviation from the described processes;
- requiring reviewers to disclose any potential competing interests before agreeing to review a submission.
- having systems to ensure that peer reviewers' identities are protected unless they use an open review system that is declared to authors and reviewers.
- managing conflicts of interest of staff, authors, reviewers, and editorial board members

In contrast, the ODFW's process consisted of the scientists themselves asking past colleagues and persons in similar positions in nearby states to conduct the reviews and send comments back directly to ODFW staff. This presents a bias where reviewers are less likely to be critical because not only are their identities known to the report's authors, but their responses are directly sent to the authors.

Meanwhile, many independent scientists *did* review the report and submitted their critiques, which were included in the public comment for the delisting meeting but summarily ignored by the Commission.

In closing, Governor Brown, I ask that you restore public faith in the Commission's work and process. Pressure the Commission to reconsider continuing protection for wolves in our state until a more appropriate review process can be completed and the science can be independently verified or revised to where independent scientists come to a consensus that can then be considered by the ODFW Commission. If HB4040 is passed by the House and Senate, veto the bill when it lands on your desk and allow the Commission's authority and the public's right to legal review stand.

Sincerely,

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February 21st, 2016

RE: HB4040 SENR Public Hearing

Chair Edwards,

I appreciate that your Committee (SENR) has put HB4040 under appropriate scrutiny. I agree with your statement that things have “not been above board”. Please accept these comments for the record as they directly address the public hearing that took place on Thursday, February 18th.

Your statement about the above board nature of this bill applies equally to HB4040 proponents this session as to ODFW’s delisting process that the bill seeks to “shore up”. By “ratifying” that decision, and - as a practical matter - insulating it from independent judicial review, HB4040 could also set a precedent that the requirements of the state Endangered Species Act and associated rules are not standards that need to be met for all wildlife. Especially with its weighted whereas language, the bill also rebuts input from dozens of independent scientists, thousands of citizens, and stakeholders who have played by the rules.

I hope you have given – or will give - serious consideration to the letter we submitted on February 18th before determining how, or if, to proceed. Passage of HB4040 would only satisfy a desire to weigh in on one side of a controversial issue and further deepen divisions between stakeholders. Given the misinformation and misrepresentations upon which the bill has moved thus far, it would also send a troubling message at a time that Oregonians are keenly sensitive to ethical concerns.

Below please find some specific follow up to unanswered questions posed and misrepresentations made at the hearing on February 18th.

- Senator Olsen asked for a professional opinion on the state’s peer review:
 - Attached please find a letter submitted to Governor Brown earlier this month from constituent with professional peer-review credentials.
 - On several occasions during the status review process, ODFW staff explicitly told conservation stakeholders that even the “science review” and “scientific review summary” documents were not meant to satisfy a peer review requirement.
- During the public hearing on February 18th, the peer review was called a “red herring.” It is a legal requirement:
 - The Farm Bureau questioned the need for a peer review by reading the requirements of ORS 496.176 for “verifiable” science. The relevant rule (OAR 635-100-0010(16)) defines “verifiable” as meaning “scientific information reviewed by a scientific peer review panel of outside experts who do not otherwise have a vested interest in the process.” Starting in April of 2015, we publicly and repeatedly asked for an independent peer review and followed up with several legal analyses highlighting the requirement.

- Senators asked stakeholders for their position on the Wolf Plan:
 - Oregon Wild has consistently supported the Plan since its promulgation despite making many concessions to gain the support of the Oregon Cattlemen's Association and other stakeholders who immediately opposed it. We recognize the Plan is not perfect, but have lived up to our commitments. We stand by its overarching framework, celebrate its success so far, and have continued to work with the state and stakeholders to improve it within that framework.
 - Our consistent support includes campaigning for full funding, defending it against no less than 7 proposed pieces of legislation since 2011 that would have undermined it and ODFW authority, a weakening of the Plan during the 2010 review, challenging actions that ran counter to the Plan, Commission action in 2013 that arguably violated a settlement agreement, participating in the status review in 2015, and reaching out to other stakeholders to avoid conflict. Our trust has been violated on numerous occasions. By rewarding dishonest actions of bill proponents, passage of HB4040 could test the limits of conservation community support for the Plan and erode public trust in ODFW.

- Additional misinformation on February 18th:
 - Some of the inconsistent behavior of bill supporters has been exposed during recent proceedings, however it has continued. On February 16th, livestock industry representatives seemed to acknowledge the bill's purpose was to prevent a successful legal challenge. They encouraged the Committee to pass the bill because a legal process would exclude them. They neglected to say that they had requested intervener status. Having achieved that status, those parties will be part of any legal review. Other parties have pending petitions to be included.
 - Confronted with that information, on February 18th, the Farm Bureau transitioned to saying that their concern was that *settlement* could occur and may not include them. We have been proactively told by state officials that there is no interest on the state's side to engage in any sort of settlement agreement or discussions.

The continuing misrepresentations of stakeholder actions, history, policy, and other important facts should be sufficient to give the legislature pause before declaring an emergency and passing HB4040. Rather than encourage co-operation, the passage of HB4040 would only further drive a wedge between stakeholders in wolf conservation and management. We urge you to vote no on HB4040.

Best,



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