Deschutes River Alliance
Northwest Environmental Advocates
The Conservation Angler
Willamette Riverkeeper

March 14, 2017

Representative Brian Clem, Chair
House Agriculture and Natural Resources Committee
900 Court St. NE, H-478
Salem, Oregon 97301

Members, House Agriculture and Natural Resources Committee

Re: **HB 3249 Oregon Agricultural Heritage Program**

Dear Representative Clem and Members of the House Agriculture and Natural Resources Committee:

On behalf of our members and supporters, we write to express our concerns about and urge your opposition to HB 3249. This bill would establish an Oregon Agricultural Heritage Fund and Oregon Agricultural Heritage Commission. At a time when Oregon is struggling—and will fail—to fully fund its existing programs, it makes little sense to embark on a new program of revenue expenditure that provides no assurance of public benefits.

Clearly Oregon needs to find ways to reduce the impacts of agricultural activities on public resources—water quality and quantity, salmon and steelhead, wildlife, and human health. Turning over public funds to advance the private interests of landowners, however, will not accomplish this task. The attached analysis explains why we believe that this is precisely what HB 3249 does.

Each of our organizations has a keen interest in ensuring that limited state and federal tax dollars are used for permanent protections to address the highest priorities where agricultural activities are affecting public resources. The Conservation Angler is an advocate for the conservation and protection of wild fish and wild rivers. Willamette Riverkeeper works to protect and restore the Willamette River Basin's water quality and habitat. Northwest Environmental Advocates has been working to protect Oregon's water quality from permitted dischargers and polluted runoff for decades. The Deschutes River Alliance is a science-based advocacy organization seeking collaborative solutions to basin-wide threats to the health of the Deschutes River and its tributaries.

We urge you to voice your opposition to HB 3249 as an unnecessary burden to taxpayers for little or no public benefit.

Sincerely,

David Moskowitz, Executive Director
The Conservation Angler
theconservationangler@gmail.com
971-235-8953
3241 NE 73rd Avenue
Portland, OR 97213

Bill M. Bakke, Director of Science and Conservation
The Conservation Angler
bmbakke@gmail.com
503-977-0287

Travis Williams, Executive Director
Willamette Riverkeeper
travis@willametteriverkeeper.org
1515 SE Water Ave., #102
Portland, OR 97214
Main office: 503-223-6418
Cell: 503-890-1683

Nina Bell, Executive Director
Northwest Environmental Advocates
nbell@advocates-nwea.org
P.O. Box 12187
Portland, OR 97212
503/295-0490

Greg McMillan, President
Director, Science and Conservation
Deschutes River Alliance
greg@deschutesriveralliance.org
PO Box 440
Maupin, OR 97037
541-410-9626

Attachment: HB 3249 Bill Analysis and Commentary

HB 3249 Bill Analysis and Commentary

The purpose of this bill is highly questionable. It seeks to create a new quasi-regulatory infrastructure—with its attendant costs to the taxpayers—that is intended to pass along yet further tax funds to landowners who would like to do something, including planning, pertaining to their lands. Some and possibly all of the planning has no clear public value but is merely a give-away to landowners. For example, the expenses of Sec. 6 for "succession planning," i.e. estate planning, should remain the responsibility of landowners, not taxpayers. The purported "conservation management plans" in Sec. 4 include "energy and human needs considerations," which are clearly private benefits without any corresponding public benefit.

Beyond planning, there are virtually no restrictions as to how the funds could be used to support activities on the land. Sec. 5 merely states that the covenant or easement must provide for continued agricultural purposes "while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land." The pervasive phrase "natural resource values" is never defined and there is no indication that any measurable public benefit is required in order to justify expenditures. For example, under this provision there need be no water quality benefit whatsoever despite the huge water quality issues faced by Oregon. There is nothing that ensures that there will, in fact, be an environmental benefit because "maintaining" habitat and "supporting other natural resources values" has no meaning. In fact, in light of the Whereas Clause No. 1, in which it is asserted that farm and ranch lands currently "support a variety of natural resource functions" notwithstanding their significant toll on fish, wildlife, and water quality, the bill itself ensures that Sec. 5 purposes are entirely in the eye of the beholder.

While the bill provides for a process by which funding priorities will purportedly be identified, there is no assurance that these priorities will be based on public needs, such as species on the verge of extinction. Instead, the ranking criteria set out in Sec. 6(a)–(f) are so broad as to constitute complete discretion on the part of the Commission. Certainly the bill does not intend to ensure that lands are managed to the benefit of public resources despite the public funding.

It is unclear why more funds are not channeled into the existing structure of OWEB rather than creating an agricultural landowner-controlled fund with dueling purposes, new administrative costs, and no clear mandate pertaining to public benefits. Merely compensating farmers for maintaining their lands in agricultural use is a poor use of public dollars.

In fact, OWEB already funds conservation easements. The very reasonable catch is that those easements must meet the goals of the Oregon Plan for Salmon and Watersheds. In this bill, agricultural landowners seek to avoid the limitation of using tax dollars for improving water quality or native fish habitat. If, instead, this funding were to be provided from OWEB, it could also be used as a match for easement funding under the 2014 federal Farm Bill, thereby gaining access to federal funding that would not be encumbered by the need to improve water quality of native fish populations—the obvious goal of this bill.

In short, HB 3249 bill simply provides more money to farmers and ranchers without any sort of accountability for actually achieving established conservation or water quality goals of the state.

Whereas Clauses

Clause No. 1 is, for the most part, wishful thinking. The majority of Oregon's agricultural lands only weakly support what might be termed "natural resource functions." It is more correct to acknowledge that those lands are a major contributor to water pollution, flow diminishment, and habitat loss that are a large part of why the state has threatened and endangered species that are not recovering and many other species with diminishing populations (e.g., amphibians). There is no clause in the bill that even acknowledges that activities on agricultural lands affect water quality and the species that depend upon clean, cold water.

Clause No. 2 likewise asserts that Oregon has a long tradition of land stewardship that supports natural systems, an assertion that is simply incorrect. Agricultural lands could be managed to ensure protection of water and air quality, native species, and human health but they have not been to date.

Clause No. 4 refers to "well managed" lands' supporting fish and wildlife habitat. If "well managed" is defined by the land owner, then we strongly disagree with this statement. It is precisely the failure to define what is needed to support fish habitat on agricultural lands that underlies the failure of the current program to meet water quality standards on agricultural lands in Oregon.

Clause No. 6, which refers to "flexible voluntary" tools is at the very least redundant. If they are voluntary they are by definition flexible. In addition, it implies that a voluntary program is the only way to address the problem this bill aims to solve.

Clause No. 7 alludes to obtaining federal money to protect "working lands" while "maintaining and enhancing" fish habitat; there is no indication that such federal funds would be used to protect fish or water quality—or to meet the state's water quality goals—any more than they have to date. The system is broken and this bill does more to perpetuate it than to fix it.

Section 3 – Expenditures

(1) Providing Oregon and/or federal tax dollars to private land owners without obtaining permanent, clear, and enforceable protection for public resources is a very poor use of limited tax dollars.

(1)(c) Funding succession planning without obtaining any corresponding public benefit is merely further tax subsidies for an already highly-subsidized set of citizens.

Section 4 – Funding of Landowner Plans

(1) The phrase "natural resources values," while key to this and other sections of the bill, is not defined anywhere in the bill.

(2) The bill's core purpose of creating "conservation management plans" as set out in this subsection is overly vague.

- The bill's limitations of protecting public resources only insofar as they are consistent with the "social and economic interests" of the land owner is such a broad exception as to swallow any stated intent to protect public resources.

Farmers have made it clear that in their view the forested riparian buffers that are needed to protect water quality have an unacceptable cost.

- The plan is "pick and choose"—completely at the discretion of the land owner—as to the undefined "natural resources values" that pertain to "soil, water, plants, animals, energy, and human need considerations." It is not clear how human need considerations are natural resources values. This list is so broad as to encompass the development of plans that have no positive impact on public resources whatsoever. For example, it could be a plan that calls for installation of wind turbines for the financial benefit of the land owner without any public benefit.

(3) This subsection does not clarify or restrict the breadth of the plans developed. It merely states that OWEB rules apply. If OWEB rules apply, why is this expenditure of public monies coming with its own costly staffing?

(4) This provision is obviously going to enrich certain nonprofit organizations while not assuring that any public benefit accrues.

Section 5 – Funding of Landowner Expenses

(1) No public funds should be expended for temporary (i.e., "conservation covenant" as defined by Sec. 1(3)) public benefits. There is no logic to restoring fish habitat or protecting water quality on the basis that those actions will be needed less in the future. In fact, with climate change, all restoration actions will be needed even more greatly in years to come. In addition, this subsection also suffers from the ambiguity inherent in the "other natural resource values" phrase that is used liberally throughout the bill. Providing funding to landowners on the vague premise that they will be "maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land" is not sufficient to warrant the use of taxpayer dollars.

(4) There are no expectations set out for the use of public monies to support the purchase, implementation, or monitoring of covenants and easements. There are no assurances that the funds will be used in a way that justifies their use, for example, in planting a riparian buffer that is adequate to provide stream protection—with shade, groundwater retention, streambank retention, and filtration—rather than one that is inadequate and that as a consequence will provide little or no public benefit. Nor is there any assurance that there will be any science behind the choice of lands that will be the recipient of these funds such that they will actually benefit, for example, threatened, endangered, or candidate species.

Section 6 – Priority Ranking

(1)(a) There is no rationale for providing public funds for private land succession planning absent some clear public benefit.

(3) It is unclear how conservation management plans will be ranked if they have not already been written. More important, the ranking criteria (a)–(f) are so broad as to constitute complete discretion on the part of the Commission. The bill's bases for setting priorities are in striking conflict with each other. For example, subsections (a), (c), and (f)—which are intended to protect private farming and ranching interests—and subsection (b)—

which is intended to protect public resources—are largely irreconcilable.

(7) This appears to prevent land owners from getting paid twice for the same activities. This is good.

Section 7 – Commission Membership

(2) The Commission will be comprised of 11 voting members of which 6 are agricultural interests, a clear majority (four farmers, one OSU Extension Service, one Ag Board recommendation). There is the potential for zero Commission members to have water quality expertise from the perspective of what is required to meet Oregon's water quality goals. The Oregon Department of Environmental Quality is omitted altogether. There is nothing in the make-up of the Commission that ensures that anybody with knowledge of Oregon's water quality goals—as expressed in state water quality standards and Total Maximum Daily Loads—is on the Commission. It is altogether possible that the Ag Board recommendation of someone with "expertise in agricultural water quality" will result in the seating of a Commission member who believes that cows walking in streams is good for water quality. The OWEB choice, for the sole person who is required to represent the undefined "natural resource values," does not even guarantee that person is not a landowner or does not come from an organization with a vested interest.

Given that nothing in this bill forces anybody to do anything on their lands but does provide significant financial rewards to private landowners, it is unclear why private landowners are given a voting majority by law.

(3) The provision for outgoing members to recommend their successors is simply a way for agricultural interests to maintain a majority of farmers who believe as they do.