

## 'We believe the statute still provides significant protection for agricultural production facilities'

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The prosecuting attorney in the county where the footage was obtained told Capital Press there was no evidence the dairy's owner or management had any involvement in or knowledge of the abuse.

After the Idaho Legislature passed the law in 2014 by a combined vote of 79-24, it was challenged in court by Animal Legal Defense Fund and a coalition of animal rights and public interest groups.

Those groups also claimed victory following the court's Jan. 4 ruling.

The court's finding that the law's restriction on secret recordings is unconstitutional was a huge victory, said ALDF Senior Attorney Matthew Liebman.

"I think the whole point behind this law was to stop recordings coming out and now that that recording ban is unconstitutional, that's a major victory as far as we're concerned," he said.

IDA Attorney Dan Steenson pointed out the title of the statute is "Interference with agricultural production."

While the court ruled the law's recording provision is unconstitutional, it upheld a provision making it a crime to obtain records of an agricultural production facility

by force, threat, misrepresentation or trespass.

As the court realized, "someone stealing your records by lying to you ... can be devastating to a business," Steenson said.

The court also upheld a provision that makes it a crime to obtain employment with an ag production facility through misrepresentation with the intent to cause economic or other injury to the facility's operations, business interests or customers.

The law requires those charged with a crime to pay restitution to the victim in an amount equal to twice the damages and they would also face one year in prison and a fine of up to \$5,000.

Everyone wants to focus on the recording provision, but that's not the only protection the law affords agricultural producers, Steenson said.

"We believe the statute still provides significant protection for agricultural production facilities from wrongful interference," he said. Each of the provisions "address different types of interference that agricultural facilities might experience."

In a news release, ALDF said the court upheld those other provisions in the law "only after construing them narrowly."

## Some say bill could be basis for a plan that aids salmon while allowing rural building

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The bill was criticized by farm groups and property-rights advocates. It also was disparaged by tribes and environmental groups as not protective enough of streams.

Some lawmakers, along with the Department of Ecology and Gov. Jay Inslee's office, say the bill could be the basis for a plan that aids salmon while allowing rural building.

"This is, by far, not a perfect bill, but the goal of this bill is to allow wells where otherwise there may be prohibitions or problems getting a well," said the bill's sponsor, Sequim Democrat Keven Van De Wege, the committee's chairman.

An earlier version of the proposal called for a daily limit of 350 gallons.

Sierra Club lobbyist Bruce Wishart said a cap is needed to prevent homeowners from consuming large amounts of water outdoors.

"We're a little disappointed that we've gone from 350 to 400, but the idea is to focus on protecting from the impacts of outdoor water use, which really is our greatest concern," he said.

Warnick said residents in her Eastern Washington district use water to safeguard their houses.

"Without being able to water outdoors, the fire hazards are fairly significant," she said. "We had a fire go through the flatland, no trees, very, very quickly, and if people didn't have lawns around their homes, they would have lost their homes."

Washington Farm Bureau associate director of governmental affairs Evan Sheffels said the 400-gallon limit would be a problem for farm families. "We think 400 gallons is too low, especially when you look at the need for a vegetable garden and fire (protection)," he said.

The 400-gallon limit could be revised by the watershed committees in five years. Cindy Alia, representing the Cattle Producers of Washington and Citizens Alliance for Property Rights, said buyers and lenders can't wait five years to find out what the permanent rules will be.

"A temporary fix is exactly the same as no fix," she said.

# Solar developer disputes blockage of 80-acre project on farmland

## Approval of Oregon solar facility overturned last year

By MATEUSZ PERKOWSKI  
Capital Press

SALEM — A solar power developer claims that Oregon's land use laws don't prohibit the construction of an 80-acre solar project on high-value farmland in Jackson County.

Origis Energy had won the county's approval to build the facility near Medford, Ore., but that decision was overturned last year by Oregon's Land Use Board of Appeals.

The developer is now seeking to convince the Oregon Court of Appeals that LUBA wrongly found the project doesn't qualify for an exception to the state land use goal of preserving farmland.

During Jan. 5 oral arguments in Salem, Ore., attorneys for Origis claimed that if their project didn't qualify for an exception to build on farmland, it's difficult to envision any renewable energy facilities that would.

Federal and state government priorities for the development of renewable energy provide a valid reason for the exception, said Josh Newton, an attorney for an Origis subsidiary developing the site.

"The county properly considered those policies in justifying its decision," Newton said.

Contrary to Jackson County's opinion, LUBA decided that building new renewable energy facilities isn't a requirement of the state land use goal of improving energy conservation.

The proximity of the proposed 80-acre solar project to an electrical substation roughly a mile away in Medford should not have



The Oregon Court of Appeals heard oral arguments Jan. 5 about the fate of an 80-acre solar project on farmland in Oregon's Jackson County.

been relevant to the county's approval of the project, according to LUBA.

It's not unusual for substations to exist in the outer industrial zones of an "urban growth boundary," so this doesn't justify building on nearby farmland, the ruling said.

Flat ground and access to sunlight are also hardly unique, so siting a solar facility at that location isn't justified by those factors, LUBA said.

The developer argued there was a demonstrable need to locate the solar facility on farmland.

"There were no other parcels of land available for the project," said Newton, its attorney.

The hurdles to renewable energy development on farmland would be practically insurmountable under the reasoning of 1,000 Friends of Oregon — a nonprofit that opposes the project —

and Oregon's Department of Land Conservation and Development, he said.

"I did not hear a viable path for an exception anywhere in the state," Newton said.

Meriel Darzen, an attorney for 1,000 Friends of Oregon, countered that renewable energy policies don't override Oregon's protections for farmland.

"These solar arrays don't actually have to be on rural lands," she said. "There's nothing about federal and state energy policy that pushes it onto farmland."

The desire to put renewable energy facilities on farmland is no different than the desire to build residential subdivisions or other developments, she said.

"If you want to put it in a certain place, you have to go through the appropriate pathway," Darzen said.

Just because Origis didn't obtain its desired outcome in

this case doesn't mean that LUBA didn't appropriately apply state land use law, said Denise Fjordbeck, attorney for DLCD.

"Exceptions are supposed to be exceptional," she said. "It should be an uphill lift."

Solar facilities are allowed on prime farmland in Oregon as long as they're under 12 acres and receive a conditional use permit from the local county government.

Projects larger than that size must contain an exception to Oregon's goal of conserving farmland, which means the development site must contain a unique resource or a comparative advantage over other locations.

Farmland preservation groups such as 1,000 Friends of Oregon don't oppose solar development but they argue facilities should be on marginal lands or other areas where they won't disrupt agriculture and take high-value soil out of production.



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