

OUR VIEW

Public can get stung by trade secrets

The recipe for Oreos. Facebook algorithms. The mix that makes a Black Butte Porter a Black Butte Porter. Those are all arguably trade secrets. You wouldn't expect Deschutes Brewery to be forced to make public the precise recipe for its beers. The problem can be when trade secrets — or what are argued to be trade secrets — intersect with things important to the public. Like water.

In The Dalles, the City Council approved a new deal with Google to allow it to expand its data centers. Data centers are thirsty. And technically, under Oregon law, all water belongs to the public.

Some residents of The Dalles and some journalists wanted to know how much water Google would be using. City officials argued the amount of water the expansion will take is sustainable for its aquifer. But people have different ideas about what is sustainable. And members of the public can't really judge how good a deal is unless they know how much water the data centers will be drinking.

Google argued that information is a trade secret. The Dalles sued The Oregonian to keep the information secret. And so far, that is the way the issue remains.

The Oregon Sunshine Committee, set up to ensure Oregon's public records laws are working, has been taking a look at the trade secrets section of public records laws.

Businesses do have trade secrets that deserve to be protected. And government agencies need to contract with businesses. In those contracts, businesses will make assertions that the agreements contain trade secrets. It's generally in the interest of a company to assert that as much as possible of an agreement is covered by trade secrets. That limits the ability of a competitor or anyone else to gain any advantage by reading the contract.

But government bodies are not typically equipped to decide if what a business is asserting is a trade secret or not. "This could allow for overclassification of potential trade secrets with the public entity stuck in the middle between a record requestor and the potential trade secret holder," according to a Sunshine Committee document.

State law does make it possible to go to court to overturn an assertion that a so-called trade secret should become public. A public records requestor can argue there is a public interest. But that probably means going to court. How many people would, say, have the resources to take on the city of The Dalles with Google backing it up?

The Sunshine Committee favored advocating that the state make three changes in the law.

1. Businesses would be required to explain to a government entity why something should be considered a trade secret and clearly denote what is a trade secret and what is not.
2. The committee also would like to see the two statutes in Oregon law that discuss trade secrets condensed into one. One statute states that there should be a public interest balancing test when considering if something should be a trade secret. The other does not. The suggestion is the public interest balancing test should apply in the revised statute.
3. Oregon could also revise the statute so that a business with an alleged trade secret — not the public entity — is the appropriate party to respond in any appeals process when a public records requestor is seeking information.

We don't know if these reform ideas will go anywhere. We can't imagine businesses will like them. And we are now sure how they will level the playing field so the public has much of a chance when a business asserts something is a trade secret — even when it's how much of Oregon's water will be guzzled. up.

DIDN'T WORK THEN...



...WON'T WORK NOW



Ag overtime bill not a victory

Before even the first gavel dropped on the 2022 legislative session, I knew that one of the most consequential bills of my legislative career would be considered.

HB 4002, or the agriculture overtime bill, was a divisive bill from the start and presented the Oregon Legislature with two options. One that would favor one side to the detriment of the rest of Oregon, especially the agricultural economy. This is what I called a win — a win for a select few at the cost of the rest of us. The other path included compromise, good-faith negotiation and a bill that would generate support from both parties. This is what I called a victory — a victory for all of Oregon.

I worked hard to get a victory, not just a win on agriculture overtime. But the final result was a win — a win for Willamette Valley liberal special interests who donate money to the majority Democrats' campaign funds.

It will make these groups feel good about themselves, but it won't make Oregonians better off. HB 4002 will result in higher prices at the grocery store for working families, hours and pay capped for agricultural workers, and ultimately the shuttering of small



Sen. Bill Hansell

family farms that fill my district.

Agriculture is a unique industry. During harvest seasons, it requires long hours to reap all the crops before frost or rains come. In ranching, there is

even more nuance.

The bottom line is that farmers and ranchers don't set their own prices, they have to take whatever price the markets are offering. The Democrats advanced an argument about ag overtime that essentially stated that a bushel of wheat harvested in the 41st hour is worth 50% more than one harvested at the 5th hour. Anyone who has grown up around farms knows that that is not true. And requiring farmers to pay their workers as such will soon result in a dwindling number of family farms to even employ these workers.

HB 4002 leveled all these unique distinctions in agriculture and mandated a one-size-fits-all "solution" that is really no solution at all. The "olive branches" that Democrats extended, the agricultural community never

asked for. One example: Under this new overtime pay mandate, family farms will now be able to apply for tax credits to ease the burden of the new overtime pay mandate. Now taxpayers will be subsidizing this new program. Farmers and ranchers never asked for that, but the majority decided that is what would be best for them.

I worked hard to come to a compromise. Simple adjustments for seasonality, flexible scheduling, and recognizing the difference between the kinds of agriculture would have helped. But the majority party rejected all these and charged ahead with what seemed to be a predetermined outcome, driven by their special interest groups.

I know how much Oregon's farmers and ranchers care about their employees and their families. HB 4002 will now force those farmers and ranchers to make difficult decisions about how much they can afford their employees to work. I grew up on these kinds of farms and I am afraid that under this policy, less and less of those farms will be around in the future.

Sen. Bill Hansell, R-Athena, is in his 10th year representing the seven counties that make up Senate District 29.

COMMENTARY

Proposed mountain bike trails raise alarm

There's a storm brewing over the Ochocos. A storm big enough that it may affect all of Oregon's national forests.

The Ochoco Mountains, which are southward extensions of the Blue Mountains, are located near the geographic center of Oregon on the Ochoco National Forest. Covering 845,498 acres of land, the Ochoco National Forest is home to more than 375 different species of reptiles, amphibians, birds and mammals. Also within these colorful mountains and lush valleys are many family ranches. Some of those ranches have been there for over 100 years.

The geographic center of Oregon is also home to one of the fastest-growing cities in the Western United States, Bend. People are flocking to Bend for its mild climate, beautiful scenery, and abundant outdoor recreation opportunities. Just travel north or south from Bend on Highway 97 and you will see for yourself the maddening increase in traffic.

The increase in population has increased the need for outdoor recreation on our national forests, and this is the epicenter of the storm brewing. The mountain biking group Central Oregon Trails Alliance, known as COTA, has proposed to the Forest Service a need for more trails to ride on.

A new trail system called Lemon Gulch has been proposed. The system would encompass 52 miles of bike trails with parking lots at trailheads in a 9-square-mile area in the Mill Creek drainage area of Crook County.

The Forest Service, by virtue of the 1976 Federal Land Policy and Management Act, or FLPMA for short, is required to manage all pub-



Matt McElligott

lic lands based on multiple use. That means grazing, mining, hunting, fishing, hiking, birdwatching and, yes, even mountain biking.

The Forest Service proceeded with the COTA bike trail proposal under the guise of managing for multiple use. Yet the agency obviously ignored FLPMA where it clearly states the public lands must be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; and that, where appropriate, certain public lands will be preserved and protected in their natural condition.

There is no way that jamming in 52 miles of trails into this area will preserve and protect the public lands in their natural condition. The law is also very clear on the process that an agency must abide by when making significant changes to the current use of the public lands it manages — in this case, dramatically increasing the human footprint in the Mill Creek drainage, specifically Lemon Gulch. The law says: No action concerning the proposal may be taken that would 1) have an adverse environmental impact or 2) limit the choice of reasonable alternatives.

The erosion and sedimentation from the trails will affect stream and water quality. Many additional people in a small area will adversely affect the wildlife population. It will degrade the natural plant population and increase noxious weed presence.

The major mistake that the Forest

Service made in moving forward with this project is that it did not adequately notify the local grazing permittees or the adjacent landowners, as required by law. There was no direct mailing, contact, or notification provided to adjacent landowners, affected landowners, or existing special use permittees. The trail system has already been marked and flagged on the ground. The Forest Service has decided Lemon Gulch is the location and refuses to consider other areas in this process.

On KTVZ, the local Bend channel, there was a news story on mountain bike usage on public lands. A public affairs officer for the Forest Service is quoted as saying, "these trails are hurting the land."

Why is the Forest Service pushing this through when they admit openly that it will hurt the land? The local people and local permittees are not against multiple use. They are against the size and scope of this project and the way it is being forced upon them. Their new slogan is, "Don't Bend Prineville."

Concerned members of the public are encouraged to attend the Crook County Natural Resources Advisory Committee meeting at 1 p.m. on April 13 in the Clover Building at the Crook County Fairgrounds. Opposition to the Lemon Gulch project will ask the committee to better convey the need for county commissioners to officially withdraw their support of the proposal until a larger community conversation takes place regarding recreational development in the Ochocos.

You can learn more about this issue and future town halls at the Don't BEND Prineville Facebook group.

Matt McElligott is the Oregon Cattlemen's Association president-elect and Public Lands Committee chair.

LETTERS TO THE EDITOR

If you leave, don't come back

To the Editor:
So a recent poll reports that Democrats would cut and run if Putin were

to invade the United States of America. It is sad that they are a self-serving, cowardly bunch, but it is good to know that we won't have to trust them in a foxhole with us. We can only hope that when they leave the country the only way back is for them to sneak in

through the southern border. However, the drug cartels, gangs and other dregs that infiltrate our country may not want their names maligned because of Democrats in their midst.

Dave Traylor
John Day



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