

BEAVER DRAINAGE IMPROVEMENT COMPANY, INC.
P.O. Box 201
Clatskanie, OR 97016
Email: ajvelke@yahoo.com Telephone (360)751-8778

Re: Stilling Wells In BDIC Waterworks

To Whom it may concern,

The redlined Hold Harmless agreement you returned to the Company regarding the stilling wells contains an error in its assertion of the jurisdiction of the Company, and there appears to be some confusion as to the scope of Company authority over all water works within its boundaries. There was also an assertion made that lack of formal easements in favor of the Company precludes the right of the Company to exercise its authority. In an effort to clarify this situation we have spelled out the applicable ORS and provisions in the Bylaws and Articles of Incorporation.

The first paragraph of the Company's Articles of Incorporation, on page 1 states that the Company is incorporated under ORS 554.

The Company's Articles of Incorporation Section 3 states that "The corporation shall continue operation and maintenance of the Beaver Drainage District's existing drainage works and any other works authorized under ORS 547."

ORS 547.405 states that "The Boards of supervisors of all drainage districts lying west of the Cascade Mountains, whether or not organized under the Drainage District Act, shall have supervision and control over all drainage ditches, laterals, drains, canals, sloughs, waterways or conduits within the boundaries of their districts, and may prescribe the width and grade thereof."

ORS 547.425 states that "No person shall throw, dump or place or allow to be thrown, dumped or placed, any rubbish, refuse or any article or thing in any ditch, lateral, canal, slough, waterway or conduit used as a part of or in connection with any drainage works or drainage plant or drainage system or any waterway under the control of any drainage district lying west of the Cascade Mountains."

The Company's Bylaws Section 13.2.2 states that "No person shall place or construct any article or thing or any culvert, structure, improvement or bridge in any ditch, lateral, canal, slough or waterway without consent of the Corporation".

Likewise, section 14 of the Bylaws spells out that the Company has the right to ingress to and egress from any member's land for the purposes of performing maintenance on the works of the

Company, and that violations including trespass and interference with the works of the corporation are subject to fines and jail time.

In regards to the assertion that lack of easements in favor of the Company precludes authority granted in the Company Bylaws, Articles of Incorporation and ORS statutes, we refer to Davis vs. Nye Ditch Users Improvement District, in which plaintiff argued that Nye (a non-profit organized under ORS 554) was not allowed to access their property due to lack of easements, regardless of authority granted from bylaws and statutes. The court ruled in favor of Nye, stating in part: "Thus, if a district wishes to obtain and own property interests or water rights, it may acquire them. But the power to obtain and own property interests on its own behalf does not preclude an improvement district from exercising its other statutory power to act on behalf of its members to operate and maintain ditches and easements that its members own. ORS 554.110, which confers the power to operate and maintain irrigation works, does not condition the exercise of that power on an improvement district's acquisition of its own water or property rights."

The Company and its predecessors have historically maintained the water levels in all the ditches within its bounds, regulated the water amounts and ensured sufficient water flow for drainage and provided irrigation water as per the powers stated above. As such, the Company has historically exercised its statutory authority for over 100 years over the lands and waterways in question and the assertion of lack of jurisdiction is in error.

NEXT, its partners, and affiliates accepted the statutory encumbrances and conditions of authority of the Company over land they own when they purchased property within the boundaries of the Company.

We hope that this clarifies the confusion regarding the authority of the Company over the water works within its boundaries, and attach a copy of the Hold Harmless Agreement which reflects this. Please return the signed Hold Harmless by February 10, 2023.

Sincerely,


Warren Seely
President, Beaver Drainage Improvement Company, Inc.

ACCESS AND HOLD HARMLESS AGREEMENT

This Access and Hold Harmless Agreement, dated February 1, 2023, is between Beaver Drainage Improvement Company ("BDIC") and NEXT Renewable Fuels, Inc. ("NEXT").

Recitals

- A. BDIC operates and maintains the Beaver Drainage District's drainage and irrigation works.
- B. NEXT has installed stilling wells for ditch water level monitoring (the "Stilling Wells") around NEXT's proposed wetland mitigation site in Columbia County, Oregon.
- C. The parties desire to set forth the terms pursuant to which NEXT may install, maintain, and monitor Stilling Wells on land on which BDIC has both statutory authority and an easement(s) that authorizes the BDIC to construct, reconstruct, repair, operate or maintain drainage ditches, diversion ditches, levees or control works (the "Easement Area").
- D. The parties have confirmed that all of the Stilling Wells are located within waterways BDIC has jurisdiction over.
- E. The Tank Creek diversion ditch easement authorizes BDIC to: "construct, operate and maintain a diversion ditch, levees and control works, for the purpose of carrying and diverting the waters of Tank Creek, the same to be of the width designated upon the plat, and to be constructed pursuant to and in conformity with the plans thereof made by the United States Engineers under the Flood Control Act of 1956...."
- F. The Beaver Dredge Cut easement grants BDIC the "[r]ight to build, construct, reconstruct, and repair the levees, embankments, revetments, canals, ditches and other incidental works appurtenant to the said Beaver Drainage District, on, over, and across the [property], and as shown on maps and plans of said Beaver Drainage District, prepared by the Corps of Engineers, United States Army, which maps and plans bearing date of September 14th, 1937, are on file with the County Court of Columbia County, State of Oregon." The Beaver Dredge Cut easement also provides the BDIC "the right to regulate any activity on the easement which may interfere with the district's Right of Use."
- G. The BDIC Articles of Incorporation Section 3 states that "The corporation shall continue operation and maintenance of the Beaver Drainage District's existing drainage works and any other works authorized under ORS 547".
- H. Under the statutory authority granted under ORS 547.405, "The Boards of supervisors of all drainage districts lying west of the Cascade Mountains, whether or not organized under the Drainage District Act, shall have supervision and control over all drainage ditches, laterals, drains, canals, sloughs, waterways or conduits within the boundaries of their districts...."

1. The BDIC Bylaws Section 13.2.2 states that “No person shall place or construct any article or thing or any culvert, structure, improvement or bridge in any ditch, lateral, canal, slough or waterway without consent of the Corporation...”

Agreement

1. License. BDIC hereby grants NEXT a license to access the Easement Area for purposes of installing, maintaining, and monitoring the Stilling Wells, which stilling wells are located as shown on the attached Exhibit A. The license will be deemed to have been granted when NEXT first accessed the Easement Area for purposes related to installing the Stilling Wells and will continue until December 31, 2033(the “Term”).
2. BDIC Activities. During the Term, BDIC may need to engage in activities in the Easement Area related to levee improvements necessitated by more stringent levee standards or in the event repairs, maintenance, flood control or improvements are reasonably necessary to be performed on the levee or interior infrastructure by BDIC (“BDIC Activities”). In conducting BDIC Activities, BDIC will use good faith, commercially reasonable efforts to avoid damaging or disrupting the Stilling Wells or otherwise interfering with the water level monitoring activities associated with the Stilling Wells.
3. Relocation of Wells. In the event any pre-planned BDIC Activities are reasonably expected to interfere with the Stilling Well testing, notwithstanding BDIC’s good faith, commercially reasonable efforts to avoid such interference, BDIC will give NEXT written notice at least five (5) business days’ prior to such interference so that NEXT may relocate the Stilling Well. In the event of any BDIC Activities that must be performed on an emergency basis that are reasonably expected to interfere with the Stilling Wells and/or monitoring occurring at the Stilling Wells, notwithstanding BDIC’s good faith, commercially reasonable efforts to avoid such interference, BDIC will attempt to call and text message NEXT’s representative Rick Stonex at (360) 430-7548 to discuss strategies for minimizing disruption to the Stilling Well under the circumstances.
4. Hold Harmless. Provided BDIC and its employees, contractors, subcontractors, and affiliates have exercised good faith, commercially reasonable efforts to avoid damage or disruption of a Stilling Well or interference with Stilling Well monitoring in accordance with this Agreement, NEXT will hold BDIC harmless in the event any BDIC Activities result in damage or disruption to a Stilling Well or interference with the Stilling Well monitoring, including with respect to any costs for repair, replacement or relocation of any Stilling Wells or consequential damages related to such damage, disruption, interference or relocation.
5. Notice. All written notices must be delivered to the parties at the mailing address shown below or any other address that a party may designate by notice to the other party. Notices are considered delivered upon actual receipt if delivered physically or by nationally recognized overnight delivery service or at the end of the third business day

after the date of deposit in United States mail, postage pre-paid, certified, return receipt requested.

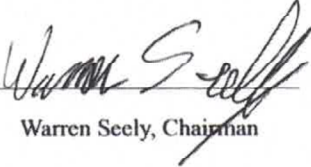
To BDIC:
P.O. Box 201
Clatskanie, OR 97016
Attn: Warren Seely
Email: ajvelke@yahoo.com; seelymint@outlook.com
Phone: 503-369-4353

To: NEXT
11767 Katy Freeway, Suite 700
Houston, TX 77079 Attn: Christopher Efird
Email: chris@nextrenewables.com
Phone: (503) 867-8100

6. **Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended in writing signed by both parties.

The parties have executed this Agreement as of the date first written above.

Beaver Drainage Improvement Company

By: 
Warren Seely, Chairman

NEXT Renewables Fuels, Inc.

By: 
Chris Efird, CEO

EXHIBIT A

Site Map

[See attached]

