

HALVERSON | NORTHWEST LAW GROUP

September 24, 2021

VIA EMAIL <Dan.Cary@state.or.us> AND REGULAR U.S. MAIL

Oregon Department of State Lands
ATTN: Mr. Dan Cary, DSL Coordinator
775 Summer Street NE, Suite 100
Salem, OR 97301-1279

Raymond G. Alexander
Alan D. Campbell++
J. Jay Carroll
Paul C. Dempsey**
James S. Elliott
Robert N. Faber
F. Joe Falk, Jr.+
Mark E. Fickes
Carter L. Fjeld+
Lawrence E. Martin*
Terry C. Schmalz+
Linda A. Sellers
Michael F. Shinn
Stephen R. Winfree+

*Also OR Bar Member
**Also State Bar of CA Member
+Of Counsel
++Retired

RE: *Permit Application 0063077 Rev. (NEXT Renewable Fuels Oregon)*
Public Comment – Beaver Drainage Improvement Company

Dear Mr. Cary:

This firm represents Beaver Drainage Improvement Company, a nonprofit corporation organized under ORS Chapter 544, which provides drainage, flood control, and irrigation services to approximately 5,717 acres within Columbia County, Oregon (the "Drainage Company"). We are writing to express concerns regarding the above-referenced joint permit application and, specifically, to applicant NEXT Renewable Fuels Oregon, LLC's ("NEXT Fuels") application to the Department of State Lands ("DSL") to remove and fill in wetland areas (the "Application"), in connection with the construction and operation of a renewable fuel facility at Port Westward, near Clatskanie (the "Facility"). The Application proposes a Compensatory Wetland Mitigation Plan ("Mitigation Plan"), to mitigate Facility impacts. In fact, the Mitigation Plan will adversely impact water resources by fundamentally altering drainage facilities and operations on adjacent, Primary Agriculture-zoned lands that lie entirely within the Drainage Company's service area. As more fully described below, the Mitigation Plan is inconsistent with the Drainage Company's jurisdictional authority, as well as with the fundamental, agricultural character of affected lands. Moreover, by its design, the Mitigation Plan is intended to convert productive irrigation lands into wetlands, which will have potentially catastrophic regulatory implications for the Drainage company and its landowner members under both federal and state water quality laws.

Finally, we also write to voice concerns about the *process* by which DSL is evaluating the Mitigation Plan. In light of the size and scope of proposed land use changes under the Application – including acknowledged data gaps concerning the underlying hydrology at the proposed "Mitigation Site," as described below – the Application cannot and should not be approved until the Mitigation Plan is complete. As discussed below, this will require, among other things, a thorough, third-party review of all fundamental geotechnical and hydrologic assumptions upon which the Mitigation Plan is premised.

halversonNW.com

HALVERSON | NORTHWEST LAW GROUP P.C.

Yakima Office: 405 E. Lincoln Avenue | PO Box 22550 | Yakima, WA 98907 | p) 509.248.6030 | f) 509.453.6880

Sunnyside Office: 910 Franklin Avenue, Suite 1 | PO Box 210 | Sunnyside, WA 98944 | p) 509.837.5302 | f) 509.837.2465

Background

The Drainage Company

The Drainage Company is the direct successor to the Beaver Drainage District ("District"), which was organized under ORS Chapter 547 and which exercised powers allowed to statutory drainage districts under Oregon law, including, without limitation, the authority to locate necessary drainage or irrigation works on any lands within its jurisdiction deemed best for such purposes; to acquire all lands, rights of way, easements and other property necessary for the construction, operation or maintenance of drainage or irrigation works, including the enlargement, improvement or extension of any natural or artificial waterway for such purposes; and to apply for and exercise water rights for use by patrons within the district ORS 547.305 - .310.

In 1994, under authority of ORS 554.375, District landowners voted to dissolve the District and to reorganize as the Drainage Company, a public corporation under Oregon law, with authority to carry on the District's flood control, drainage, and irrigation functions in the same manner as permitted drainage districts under ORS Chapter 547. Article IV of the Drainage Company's Articles of Incorporation, filed May 13, 1994, states, "The particular lands to be improved by the works of the corporation are the same lands formerly included within the boundaries of the Beaver Drainage District."

Further, Article III of the Drainage Company's Articles of Incorporation provides in relevant part:

The corporation shall continue operation and maintenance of the Beaver Drainage District's existing drainage works and any other works authorized under ORS Ch. 547. In addition to powers conferred by statute, the corporation may make improvements for these purposes, including the construction, operation and maintenance of flood control facilities and a system of sloughs, canals, ditches and waterways necessary to drain the benefitted properties, as well as make available water for the irrigation of the lands to be improved. ... The benefits of the land to be improved, the owners of that land as a whole, and the public at large will be promoted by the formation, operation and accomplishment of an improvement plan by the corporation.

Finally, Article V confirms as follows:

The corporation assumes all of the rights, duties, debts and obligations legally incurred under contracts, covenants, other agreements, lease and business transactions entered into or begun before the date of dissolution of Beaver Drainage District. ...All lands subject to liens and encumbrances of these debts and obligations remain subject to those liens and encumbrances.

Separately, under Article 12 of the Drainage Company's 1994 Bylaws, a vote of the owners of two-thirds of all lands is required to covenant and bind their lands in all matters relating to the conduct of the corporation.

Currently, the Drainage Company actively maintains and operates an extensive system of drainage ditches, as well as the surrounding dike. A cursory review of title records concerning lands affected by the Mitigation Plan (the below-described "Mitigation Site") reveals no fewer than three easements granted by Drainage Company landowners (including predecessors to NEXT Fuels) to the predecessor District for flood control, drainage, and irrigation benefits of affected lands. In 1976, the District entered into arrangements with the Army Corps of Engineers ("Corps") for the construction of comprehensive improvements to District-owned levees. In connection therewith, landowners, pursuant to that certain *Easement*, recorded December 17, 1976, under Book 209, page 279, records of Columbia County, Oregon (the "1976 Easement," a true and correct copy of which is included herewith as Attachment "A"), granted to the District and its assigns, including the Corps, the following, *exclusive* real property access and use rights:

The exclusive right, privilege and easement to go upon, maintain and keep in repair the levee and a private road situated thereon for the benefit of the landowners of said district. The district or its authorized agents shall have a perpetual right to go upon said lands to maintain, inspect, construct, rebuild and operate dikes, levees, or other flood control, drainage, or irrigation works...

Exhibit A to the 1976 Easement includes several, legally described permanent easement areas subject to the above, exclusive access and use rights in favor of the Drainage Company, including, apparently, at least two easement areas within portions of Section 34, recently acquired by NEXT Fuels for Mitigation Site purposes. Additionally, the 1976 Easement confirmed, "The district shall have the right to regulate any activity on the easement which may interfere with the district's Right of Use."

Additionally, the Drainage Company delivers water to landowners for the irrigation of more than 2,700 acres within its service area. Under Certificate 83174 issued to its District predecessor, water is directed southward to Drainage Company lands for use on specified lands lying within Township 8 N., Range 4 W., W.M. Certificate 83174 is an irrigation-only water right; it does *not* expressly allow "wetland enhancement" or specialized purposes of use for which water rights may be authorized under Oregon law. The below-discussed Mitigation Site lies entirely within Certificate 83174's authorized place of use.

Commercial agriculture dominates within the Drainage Company's service area, as it has for many decades. Additionally, there are a handful of commercial/industrial operators, whose operations do not impair the operation of the Drainage Company or its farming members.

The Mitigation Plan

The proposed Next Fuels Facility is located within the Drainage Company and entirely inside the dike. As acknowledged in the Application, most of the project site is used by Drainage Company landowners for agriculture and pastureland purposes, with mint fields to the north and west and a tree farm to the south. The Mitigation Plan is intended to mitigate for Facility impacts on agricultural lands, including what NEXT Fuels describes as the permanent removal of 117.64 acres of “wetlands.” Mitigation is to be in the form of claimed “enhancements” to non-jurisdictional wetlands and waterways at a mitigation site located approximately one-quarter mile south of the Facility.

The proposed mitigation site comprises approximately 590 acres of Drainage Company lands recently acquired by NEXT Fuels, within specified portions of Sections 27, 28, 33, and 34, Township 8 N., Range 4 W., MW (the “Mitigation Site”). Under the Application, Next fuels proposes to offset permanent wetlands impacts by fundamentally changing Mitigation Site hydrology and function by, among other measures:

- Filling approximately 26,800 linear ft. of the existing Mitigation Site drainage ditches operated by the Drainage Company.
- Creating “dendritic” channels throughout the Mitigation Site, intended to mimic naturally occurring channels found elsewhere in Lower Columbia sloughs.
- Digging shallow pools for potential reproductive habitat for amphibians and other aquatic wildlife.
- Roughening Mitigation Site surfaces for diversification of surface hydrology and resultant vegetation.
- Creating upland buffer zones along public access paths between Mitigation site wetlands.

In order to accomplish the above measures, the Mitigation Plan envisions the overall lowering of Mitigation Site surface levels, together with construction of an extensive network of onsite dendritic channels. Excavation will be as deep as six feet at some locations, with net elevation reduction averaging one and one-half feet across the Mitigation Site. In connection therewith, approximately six to 12 inches of topsoil will be removed sitewide.

Analysis and Detailed Objections

“The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. ... Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the

people of this state.” ORS 196.805 Generally, “a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit...” ORS 196.810 In determining whether to issue a permit, the DSL Director must consider, among other factors:

- The public need for the proposed fill or removal and the social, economic, or other public benefits likely to result from the proposed fill or removal;
- The availability of alternative sites for the proposed fill or removal;
- Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety.
- Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations; and

ORS 196.825(3); OAR 141-085-0565. Under its own regulations, DSL must “recognize the interests of adjacent landowners; tribal governments; public interest groups; soil and water conservation districts; drainage, irrigation and diking districts; watershed councils; state and federal agencies; and local government land use planning agencies” in evaluating fill and removal permit applications. OAR 141-085-0506(4).

As described below, NEXT Fuel’s intended use of the Mitigation Site – including its anticipated *nonuse* of the Drainage Company’s water right on those lands – is inconsistent with agricultural functions and values on all lands served by the Drainage Company. Further, the Mitigation Plan proposes changes that are inconsistent with the Drainage Company’s statutory authority and violative of exclusive operational powers under its charter documents and land use permissions.

Water Rights Considerations

The Mitigation Plan makes only scant reference to Mitigation Site hydrology and proposed use of non-naturally occurring water (i.e., other than precipitation or onsite groundwater) in connection with the planned wetland enhancements. Our unconfirmed understanding at this time is that NEXT Fuels does not intend to make use of the Drainage Company’s surface water irrigation right under Certificate 83174, at least on a continuous or extended basis, for wetlands enhancement purposes within the Mitigation Site.¹

¹ Oregon regulations define “irrigation” to include artificial application of water to promote growth of plants, OAR 690-300-0010, which *might* allow application of water, on an initial and temporary basis, for development of wetlands habitat. That said, the Mitigation Plan makes no reference to use of irrigation water. Further, and even if NEXT Fuels intended to use any portion of Certificate 83174 during initial wetland development, irrigation of the Mitigation Site on a permanent basis would be incompatible with any notion of reclaimed and self-sustaining “wetlands” habitat.

In connection therewith, reduced or nonuse of Certificate water within the Mitigation Site is inconsistent with the interests of the Drainage Company and its member landowners under Oregon's statutory water right forfeiture provisions. Pursuant to ORS 540.610, if the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, such failure creates a rebuttable presumption of forfeiture of all or part of the water right. Assuming NEXT Fuels will not or cannot by law use any substantial portion of the 2,700+ acre irrigation entitlement under Certificate 83174 within the Mitigation Site on a permanent basis, the Drainage Company and its landowners risk forfeiture of the water right. Cessation of irrigation use throughout the 590-acre Mitigation Site would force the Drainage Company to identify a commensurate number of currently non-irrigated acres elsewhere within the water right's authorized place of use that could be commercially irrigated, as necessary to ensure full, beneficial use of the right. Suffice it to say, that is a "two-way street," requiring not only Drainage Company operational capacity to reroute water to new lands, but also landowner willingness to put currently undeveloped or fallowed lands to new, commercial irrigation purposes. Unless both requirements could be fully and addressed – and absent an applicable statutory forfeiture exemption – the continuing viability of Certificate 83174 at OWRD-authorized "nameplate" levels, will be in jeopardy. Neither the Drainage Company nor its landowners can risk forfeiture of this valuable and vital irrigation asset.

Additionally, the Mitigation Plan raises serious concerns regarding real-world impacts to Drainage Company operations, including the essential irrigation and drainage requirements of its constituent landowners. Most concerning is NEXT Fuels' intention to fill nearly 27,000 liner feet of existing Mitigation Site drainage ditches operated by the Drainage Company. Of particular concern here are McLean Slough, as well as the Drainage Company's Ditch 6 – both of which are critical drainage paths and necessary for protection of farming operations throughout the Drainage Company service area. And while the Mitigation Plan asserts that hydraulic capacity will be maintained in at least certain ditches appurtenant to the Mitigation Site, the ultimate consequences of radically restructuring drainage facilities cannot be accurately predicted without comprehensive study of Mitigation Site hydrology, including particular irrigation and drainage requirements at particular locations throughout.

Shortcomings in the current level of hydrological understanding concerning the Mitigation Site are illustrated under a wetland delineation report that NEXT Fuels submitted in support of the Mitigation Plan, following DSL's preliminary acceptance of the Application and invitation for public comment. On page 12 of such report, there is a statement to the effect that Coastal Cutthroat Trout are present in McClean Slough. The Oregon Department of Fish and Wildlife has mapped these waters under its Oregon Fish Habitat Distribution utility,² on the basis of "Native origin, present within SMU prior to 1800" and "concurrence of professional opinion" – *NOT* on the basis of documented or suspected

² https://nrimp.dfw.state.or.us/FHD_FPB_Viewer/index.html

fish presence after 1800. The Drainage Company has no records of any presence of Coastal Cutthroat Trout within the sloughs or ditches inside the levee system at any time following its establishment nearly 100 years ago. The wetland delineation report also asserts that the Mitigation Site “may be accessible during periods of flooding”. This inaccurately assumes that flooding does, in fact, impact the Drainage Company service area. In fact, the Provisionally Accredited levee system blocks all floodplain connection to adjacent rivers. Further, the sloughs and ditches do not combine or affect a junction with natural surface or underground waters, meeting the exception under OAR 340-041-0002(72).

In addition to NEXT Fuels’ proposed elimination of drainage ditches, other above-cited Mitigation Site proposals, including creation of dendritic channels and “roughening” of Mitigation Site surfaces in the interest of creating more genuine wetlands features, are also problematic. While such changes would be laudable for purposes of restoring *bona fide* wetlands at other potential sites, they are inconsistent with productive, commercial agriculture functions that, in fact, characterize the Mitigation Site and adjacent Drainage Company lands. To cite but one example, the creation or recreation of sloughs or similar wetlands features on agricultural lands will alter the course and volume of water currently transported through the Drainage Company’s network of irrigation and drainage ditches, which reduces overall efficiencies. In connection therewith, we need to point out an additional Drainage Company operations consideration, which apparently is not contemplated under the Mitigation Plan. Historically, the Drainage Company recognizes separate “summer” and “winter” water levels for irrigation and drainage purposes, which differ by several feet. Thus, and depending upon the depth of NEXT Fuels’ excavation at various locations within the Mitigation Site, we expect the proposed mitigation “wetlands” could be either completely dry, or completely inundated. In either case, the desired wetlands would fail as a jurisdictional matter and mitigation for Facility impacts would be insufficient.

Collectively, the variously proposed “enhancements” under the Mitigation Plan reduce reliability and functionality of drainage systems, water delivery, and water storage capability, which introduce additional risks to capital intensive commercial agricultural operations throughout the Drainage Company service area. Based upon Mitigation Plan submittals to-date, we are not confident that irrigation water delivery and drainage services can be maintained at their current level of reliability – particularly on commercial agriculture lands downgradient to the Mitigation Site and impacted directly by the proposed fill and relocation of ditches and potential levee modifications.

The Drainage Company’s Authority under Law and Charter Documents

Next, we need to emphasize that NEXT Fuels may not undertake any changes to Drainage Company infrastructure and operations without prior permission of the Drainage Company and its landowners. As described above, the Drainage Company, by statute, as well as under its duly enacted charter documents, has *exclusive* authority over the operation and maintenance of existing drainage and irrigation ditches within the Mitigation

Site, as well as sole power to determine the need for changes to and/or construction of new drainage, irrigation, and flood control facilities for the benefit of its landowners.

In connection therewith, we also note the above-summarized and attached 1976 Easement, which vests in the Drainage Company the sole and exclusive right “to maintain, inspect, construct, rebuild and operate dikes, levees, or other flood control, drainage, or irrigation works” within specified easement areas – including lands now owned by NEXT Fuels within the proposed Mitigation Site. Further, under the 1976 Easement confirmed, “The district shall have the right to regulate *any activity on the easement which may interfere with the district’s Right of Use.*” (Emphasis added.) Under our reading of the 1976 Easement, the Mitigation Site likely includes at least two legally described, permanent easement areas, or portions thereof, within Section 34, Township 8 N., Range 4 W., MW, subject to the Drainage Company’s ultimate, operational authority. As described above, NEXT Fuels’ intended changes to elevations and Drainage Company infrastructure within the Mitigation Site are inconsistent with the operational prerogatives and best interests of the Drainage Company and its other landowner/members. Accordingly, the Drainage Company has full authority to restrict and, if necessary, forbid NEXT Fuels’ intended Mitigation Site changes under the Mitigation Plan.

Federal and State Water Quality Regulation

The federal Clean Water Act, 33 U.S.C. §1251 *et seq.* (“CWA”) establishes the basic structure for regulating discharges of pollutants into jurisdictional waters and regulating quality standards for surface waters. Section 404 of CWA generally requires individuals to obtain a permit before discharging dredged or fill material into so-called “waters of the United States,” including most wetlands. Under CWA regulations promulgated by the Environmental Protection Agency, waters of the United States generally include “waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, as well as waters tributary or adjacent thereto, typically including wetlands, ponds, and similar water bodies. 40 CFR § 230.3 By way of example only, activities within jurisdictional waters of the United States that ordinarily require permits include depositing fill, dredged, or excavated material; grading or clearing of wetlands; ditch excavation within wetlands; and construction of levees, dams, dikes, and weirs.

Similarly, the State of Oregon, regulates “waters of this state,” which include rivers, perennial streams, lakes and ponds, and other specified features. ORS 468B.005 DSL requires permits for the removal or fill of material within such jurisdictional waters, including wetlands and waterways. ORS 196.795-990.

Because Drainage Company lands are in close proximity to the Columbia River and naturally occurring sloughs and other wetland features, such lands would ordinarily be regarded as jurisdictional wetlands under both federal and state law and, thus, subject to costly and time-consuming permitting and other regulatory requirements in connection with essential irrigation and drainage functions performed by the Drainage Company and

its member landowners on a routine basis. Fortunately, however, CWA Section 404 expressly excludes “prior converted cropland” from the definition of waters of the United States. *Id.* Similarly, Oregon law exempts from permitting requirements removal and filling on “converted wetlands,” defined as “agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes.” ORS 196.921(15)(a); OAR 141-085-0535(2). These exemptions from clean water permitting requirements are essential for normal farming and ranching activities conducted on Drainage Company lands, such as plowing, grazing, seeding, planting, cultivating, conventional crop rotation, and harvesting.

Importantly, the exemptions apply *only* on lands that are being actively managed to produce agricultural commodities; they do not apply to natural, i.e., unfarmed, wetlands. Fundamentally, NEXT Fuels’ Mitigation Plan calls for the cessation of commercial farming activities within the Mitigation Site, in effect, to “reconvert” productive agricultural lands to their status as natural wetlands prior to the installation and operation of diking and drainage features by the Drainage Company and its predecessors. The implications of such unilateral reconversion of lands – including revocation of the essential clean water permitting exemptions – would be catastrophic for the Drainage Company and its members. The Drainage Company, for itself and on behalf of its farming and industrial members, opposes any measures that threaten continuing exemption from environmental permit requirements under federal and state law.

DSL Application Review

NEXT Fuels provided a project status update during the Port of Columbia County’s September 22, 2021, Commissioner’s Meeting. And we understand that you, Mr. Cary, appeared on behalf of DSL and also commented on the project and, particularly, regarding the Mitigation Plan. Apparently, all agreed that the Mitigation Plan is no more than 10-15% complete as of now. Further, we understand you expressed DSL’s opinion that the proposed “wetlands” enhancements proposed by NEXT Fuels under the Mitigation Plan would never be able to mimic historic standards under DSL administrative rules – precisely *because* the proposed Mitigation Site lies within Drainage Service boundaries, on and adjacent to lands that have been purposefully modified to facilitate commercial agriculture. You also acknowledged that DSL has never evaluated a proposed wetlands mitigation site of the magnitude and complexity proposed by NEXT Fuels on lands under operation of a diked drainage district or company.

In order to be deemed complete for DSL’s evaluation of fill and removal permit requests, applications must include the following, among other items:

- (f) A description of the project purpose and need for the removal or fill. All projects must have a defined purpose or purposes and the need for removal or fill activity to accomplish the project purpose must be documented. The project

purpose statements and need for the removal or fill documentation must be specific enough to allow [DSL] to determine whether the applicant has considered a reasonable range of alternatives.

...

(h) A written analysis of potential changes that the project may make to the hydrologic characteristics of the waters of this state, and an explanation of measures taken to avoid or minimize any adverse impacts of those changes, such as:

- (A) Impeding, restricting or increasing flows;
- (B) Relocating or redirecting flow; and
- (C) Potential flooding or erosion downstream of the project.

OAR 141-085-0550

Under our reading of the Mitigation Plan as developed to-date, and in light of acknowledged deficiencies thereunder, we question whether the Application should have been deemed complete for public comment purposes. At any rate, we think it important to bring these concerns to DSL's attention at this time, with the expectation that DSL conduct further investigation and insist upon further data and analyses concerning Mitigation Plan impacts on Drainage Company infrastructure and operations *before* rendering a final determination on the Application.

By regulation, DSL ordinarily must make a final permit decision within 90 calendar days after determining an application is complete; however, the permit decision deadline may be extended beyond 90 calendar days when the applicant and DSL agree to an extension. OAR 141-085-0560(6). In our view, much work remains to be done in this case. Accordingly, and unless DSL is prepared to deny the Application, we respectfully suggest that a substantial, additional extension will be required to allow collection of additional (and independently verified) data and analyses.

Conclusion

In summary, the Beaver Drainage Improvement Company objects to NEXT Fuels' Application – and particularly to the Mitigation Plan – on the grounds that wholesale changes to the Drainage Company's essential drainage, flood control, and irrigation infrastructure within the Mitigation Site will adversely impact water resources under the Drainage Company's operational control.

Further, NEXT Fuels' proposed Mitigation Site changes are inconsistent with the Drainage Company's power and authority under ORS Chapters 447 and 554, as well as under its charter documents and recorded easements, including the 1976 Easement. Should NEXT Fuels wish to alter or amend existing Drainage Company restrictions on lands within the Mitigation Site, it must undertake the Bylaws-prescribed process for

landowner direction to modify the conduct or operational authority of the Drainage Company as concerns the dike, levees, and ditches therein. And again, such institutional or operational changes require a super-majority (2/3) vote of all landowners.

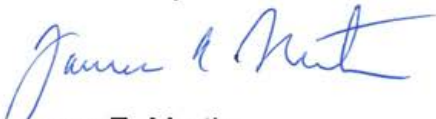
Finally, the Mitigation Plan's proposal to "reconvert" currently farmed lands within the Mitigation Site to jurisdictional wetlands, subject to clean water permit requirements, is antithetical to the best interests of the Drainage Company and its landowners.

But/for the above-described risks and uncertainties, we would welcome NEXT Energy as a valued industrial partner within the overall Drainage Company operations area. Unfortunately, unless and until those risks and uncertainties can be mitigated with sufficient certainty, the Drainage Company cannot support the Application as presented.

We very much appreciate DSL's consideration of the Drainage Company's concerns in this case. Please feel free to contact me or my law partner, Paul Dempsey, if we can provide any additional information concerning the Drainage Company's rights, duties, and operational functions within the proposed Mitigation Site under the Application.

Very truly yours,

HALVERSON | NORTHWEST LAW GROUP P.C.



Lawrence E. Martin

Encls.

cc: (via email)

Mr. Warren Seely, Beaver Drainage Improvement Company President/Secretary
Mr. Tyler Joki, AKS Engineering & Forestry, LLC
Paul C. Dempsey, Esq.