

RESOLUTION NO. 98-020

A RESOLUTION AUTHORIZING A COOPERATIVE LAND USE AGREEMENT

WHEREAS, S.D.S. Co., L.L.C., a Washington corporation, hereinafter called "SDS", owns property within the physical drainage area of The Dalles Municipal Watershed; and

WHEREAS, ORS 448.295 to 448.325 provide cities with authority to adopt ordinances to "occupy" lands for the purpose of protecting water supplies; and

WHEREAS, City of the Dalles Ordinance No. 97-1218 allows the City to enter into land use agreements for the protection of water supplies; and

WHEREAS, it would be mutually beneficial to enter into a Cooperative Land Use Agreement with SDS to restrict unauthorized access onto SDS properties for the protection of water quality;

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

Section 1: Cooperative Land Use Agreement Approved

The Cooperative Land Use Agreement between the City of the Dalles and SDS, a copy of which is attached hereto and by this reference made a part hereof, is hereby approved by the City of The Dalles.

Section 2: Officers to Act

The City Manager, City Clerk, and other officers and employees of the City of The Dalles are hereby authorized to execute the Agreement on behalf of the City of The Dalles and to do such other acts as are necessary and proper.

PASSED AND ADOPTED THIS 11TH DAY OF MAY, 1998

Voting Yes, Councilmembers: Davis, Van Cleave, Gosiak, McFadden

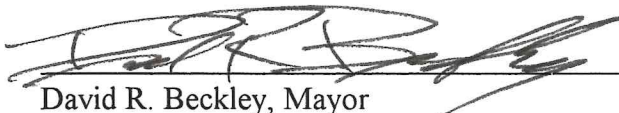
Voting No, Councilmembers: None

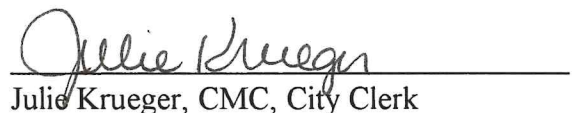
Absent, Councilmembers: Barrett

Abstaining, Councilmembers: None

AND APPROVED BY THE MAYOR THIS 11TH DAY OF MAY, 1998

Attest:


David R. Beckley, Mayor


Julie Krueger, CMC, City Clerk

COOPERATIVE LAND USE AGREEMENT

AGREEMENT made this ___ day of _____, 1998 by the CITY OF THE DALLES, a municipal corporation of the State of Oregon, hereinafter called "City" and S.D.S. Co., L.L.C., a Washington corporation, hereinafter called "SDS".

IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth, it is agreed by the City and SDS as follows:

1. SDS grants the City the right to enter upon SDS's lands which are a part of the natural drainage basin of the City's Municipal Watershed (Map marked Exhibit "A" showing the boundaries of said lands attached hereto and by reference made a part hereof) for the purpose of land closure security enforcement to control access to SDS's lands for the purpose of protecting the City's municipal water supply from pollution, with the full right and authority to exclude from said lands and to prevent the entering thereon of all persons other than the authorized agents, representatives, permittees, lessees and licensees of the City and SDS, their successors and assigns. Any agents, representatives, permittees, lessees or licensees of SDS shall not have the right to enter upon said lands unless such person is identified on a list of "Authorized Entrants" provided to the City by SDS, or has in his possession a permit signed and dated by SDS or its lessee, to be effective for a period of time stated therein.

Without limiting access to the lands by SDS, its lessees, or its permittees, SDS agrees that City, from the date hereof "occupies" said property within the definition of ORS 448.295 et. seq. for the purposes of maintaining the purity of the water resources thereon and enforcing its City ordinances against entry on or pollution of said lands.

2. This agreement shall take effect as of the date hereof and shall remain in full force and effect until December 31, 1998, and from year to year thereafter, until terminated by written notice of termination given by either party to the other with not less than 30 days notice.

3. The City agrees to provide the necessary "gate locks" at appropriate entry points into SDS's lands and further to provide a key(s) as may be necessary to SDS's needs and desires. SDS shall provide its own locks at these access gates and keys shall be issued by SDS to its authorized representatives, agents, or designees for use ONLY in SDS's locks. Keys for City locks shall be issued ONLY by the City.

4. SDS grants to the City the right to apply to the lands covered by this agreement the same closure regulations as presently apply to the City's Municipal Watershed. These regulations are authorized under ORS 448.295 to 448.325 and City of The Dalles Ordinance No. 97-1218, copies of which are attached to this agreement marked Exhibit "B" and by reference made a part hereof. The City agrees to prepare and post necessary closure signing, without using steel fasteners on merchantable trees, on the perimeters of SDS's properties and at appropriate road junctions providing access into SDS lands. SDS further grants to the City the right to enter upon the described lands during the life of this agreement to patrol the lands against unauthorized entry thereon and use thereof, to post the necessary closure regulation signs and to maintain these signs.

SDS agrees to inform the City of any grazing permits, hunting leases or rights, leases or other occupancy permits of any kind or nature (or orally inform City of any unwritten or informal permission) granted to others by SDS so the City will be advised of the nature and term of occupancy or use of the property by any person other than SDS.

5. The City agrees that it will not commit any waste on said lands and will not cut, damage or destroy any

timber, trees or forest growth thereon and will not damage or destroy any buildings or possessions of SDS located on said lands, and will not construct or cause to be constructed any fences, gates, buildings or other improvements which are not described in the agreement, without permission of SDS.

6. The City will indemnify and save harmless SDS from and against any damages, cost or liability which SDS may sustain or be put to by reason of the failure of the City to keep and perform any covenant or agreement which the City is obligated to perform.

7. Consistent with the exercise of the rights granted to the City hereunder by SDS, SDS reserves to itself, its successors and assigns the right at all times to occupy, enter upon and utilize the described lands for any purpose or purposes incident to the ownership thereof, and specifically without limiting the generality hereof, for the purposes of building any structures within applicable building and zoning codes and growing, cultivating and producing timber, trees and forest growth thereon, and reforesting the same, logging, harvesting and removing timber, trees, forest growth and forest crops therefrom, raising livestock, hay and feed, and constructing, maintaining and using such roads, trails and other improvements as may be necessary or incidental to such operations.

8. The City and SDS agree to participate in scheduled meetings or discussions to be held no less than annually for the purpose of evaluating the objectives of this agreement and consideration of any modifications that may be deemed necessary.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

CITY OF THE DALLES, a municipal corporation of the State of Oregon

By: _____
Nolan K. Young, City Manager

Approved as to form: _____
Gene Parker, City Attorney

Attest: _____
Julie Krueger, CMC, City Clerk

S.D.S. Co., L.L.C., a Washington corporation

By: _____

Title: _____