

IN THE MATTER OF
THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996 C. 131
AND IN THE MATTER OF TWO COMPLAINTS REGARDING A DISTURBANCE
FROM RUN OFF WATER ON A NEIGHBOURING FARM IN
COURTENAY, BRITISH COLUMBIA

BETWEEN:

**RICHARD NEVEAUX
TOM STEVENS**

COMPLAINANTS

AND:

TWOTEN RESOURCES LTD.

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Gunta Vitins, Chair & Presiding Member
Neil Turner, Vice Chair & Member
Pawan Joshi, Member

For the Complainants:

Richard Neveaux, self-represented
Tom Stevens, self-represented

For the Respondent:

Jeff Hamilton, self-represented
Neal Hamilton, self-represented

Date of Hearing:

August 13-14, 2025

Place of Hearing

Courtenay, British Columbia

A. INTRODUCTION

1. This decision relates to two complaints filed with the British Columbia Farm Industry Review Board (**BCFIRB**) under section 3 of the *Farm Practices Protection (Right to Farm) Act*, RSBC 1996, c. 131 (the **FPPA**), and received by BCFIRB on November 7 and November 9, 2023.
2. In brief, Mr. Neveaux and Mr. Stevens, (the **Complainants**) allege that they are aggrieved because the neighbouring cranberry farm, Twoten Resources Ltd. (the **Respondent**), owned and operated by Jeff Hamilton, generates excess run-off water by releasing water used in cranberry production into local drainage ditches which results in flooding on both of their properties.

B. BACKGROUND

3. The Respondent owns a cranberry farm located in Courtenay, BC, on three adjacent properties that operate as one entity. These properties total 68.1 acres and of that, 63.1 acres are located within Agricultural Land Reserve (**ALR**). The Respondent has planted 16 acres of this total area in cranberries.
4. In late October of 2023, during a period of significant rainfall, the Respondent released water from its flooded cranberry fields that it utilized for harvest purposes into the local drainage ditches. The release of the harvest water by the Respondent coincided with the subsequent flooding of the Complainants' properties. The complaints arise from this incident however the Complainants further allege that the practice of releasing harvest water from the Respondent's farm operation has caused historic flooding of their respective properties and will continue to cause flooding in the future if not abated.
5. BCFIRB retained Ministry of Agriculture and Food, Carolyn Teasdale Professional Agrologist, as a "Knowledgeable Person" (the **KP**) under section 4 of the FPPA. Ms. Teasdale is an industry specialist in berry production and prepared a report which assesses the Respondent's farm, water release and harvest practices. Ms. Teasdale testified at the hearing.
6. The BCFIRB hearing panel (the **Panel**) conducted a site visit of the Complainants' and the Respondent's properties on August 13, 2025.
7. The hearing was held before the Panel in Courtenay, BC on August 13 and August 14, 2025. The hearing was held in person.
8. In making the decision that follows, the Panel has fully considered all of the facts and evidence in the parties' written submissions and presented during the hearing. However, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision. The Panel will not comment on the various assumptions and conclusions drawn by the parties, or the criticisms they directed

at each other, in their written submissions or at the hearing.

C. ISSUE

9. Are the Respondent's water management practices in accordance with 'normal farm practices'?

D. COMPLAINANT EVIDENCE

Complainant – Richard Neveaux

10. Mr. Neveaux acknowledged that when he purchased his property, he was advised that the north side of the property was prone to flooding. He further stated that the previous owners had made some drainage modifications to the garage building on the property to mitigate the effects of the flooding.
11. Mr. Neveaux described the flood event that occurred at approximately 5:00 pm on October 20, 2023. He testified that the water was travelling east down the ditch adjacent to Mr. Steven's property at a depth of more than two feet before flowing across May Road, a roadway between the affected properties, and onto his property.
12. Mr. Neveaux claimed that similar flooding events have occurred on several occasions and due, in part, to the 90-degree angle of the ditch across the road from his property. He also claimed that the flood water travels underneath or through the road base and onto his property. Mr. Neveaux referred to several photos showing water travelling east across May Road towards his property.
13. Mr. Neveaux stated that after observing the flooding on October 20, 2023, he contacted the Ministry of Transportation and Transit, as well as their contractor, Mainroad North Island Contracting LP. He also testified that he reached out to the Comox Valley Regional District Bylaw Officer, who recommended that he contact BCFIRB.
14. Mr. Neveaux referred to an additional photo documenting a similar flooding event that occurred on December 26, 2022, during which water again flooded that same ditch and crossed May Road onto his property. He claimed that this event was likely the result of an atmospheric river event.
15. Mr. Neveaux stated that in 2024 he did not observe any flooding at May Road. He suggested that the lack of flooding that year is evidence that the Respondent has the ability to manage the release of the floodwater from their property, in a way that prevents flooding on his own.
16. On cross examination Mr. Neveaux stated that he observed flooding on his property from 2019 until 2023. He claimed that even with a very high rainfall event on March 9, 2025, he did not observe flooding of May Road.

17. On further cross examination Mr. Neveaux agreed that there was significant sub surface water flow across his property and that the water table remained high.

Complainant – Tom Stevens

18. Mr. Stevens testified that since acquiring his property in 2019 he has experienced flooding in the ditch within the right of way that crosses it. He stated that this flooding eroded the surface of his driveway and flowed over May Road in front of his property. He stated that he had to replace the surface of his driveway as a direct result of the erosion caused by the flooding. He also stated that he replaced the culvert under his driveway and installed a fence and 20-inch culvert at the east end of the Right of Way where the ditch joins the ditch running south on May Road.
19. Mr. Stevens testified that he contacted the Area Manager of the Ministry of Transportation and Transit and received an email response on November 6, 2023. Mr. Stevens stated that it was his understanding that there were no Ministry resources available to conduct ditch maintenance on May Road and Quenville Road at that time.
20. Mr. Stevens testified that the issue could be resolved if the Respondent notified the Complainants three days in advance of the release of its field water into the local ditch system. He further stated that there should be open communication between the parties regarding the flow conditions of the ditch system.
21. On cross examination Mr. Stevens stated that he did not believe that the ditch system was designed or constructed to handle the volume of water that is drained from the Respondent's farm operation and contributing properties.

E. RESPONDENT EVIDENCE

Respondent – Jeff Hamilton

22. Mr. Hamilton stated that the Respondent's property had been farmed for many years prior to the development of the residential subdivisions on May Road and that the ditching and drainage around the farm predated the Respondent's ownership of the property.
23. Mr. Hamilton testified that the Approving Officer for the subdivisions, including the residential properties on May Road, was the Ministry of Transportation and Transit and that all ditching and drainage would have been designed and constructed with the Ministry's approval. He further testified that the Ministry is also responsible for maintaining these ditches and culverts.

24. Mr. Hamilton stated that the Ministry of Transportation and Transit had failed to maintain the drainage system and failed to properly permit the modifications that have been made within those rights of way.
25. Mr. Hamilton referred to a report completed by WWK Engineering Ltd. Partners (the **WWK Plan**). The purpose of this plan was to assess the existing hydrologic conditions, to account for increases in rainwater runoff due to climate change and to estimate pre-development peak flows from the subject site.
26. Mr. Hamilton noted that the Respondent's property consists of well drained to rapidly drained soil types and, as a result, has considerable subsurface drainage. He also referred to the conclusions in the WWK Plan, which stated the Respondent's property provides a key role in stormwater management by capturing and slowing the flow of rainwater, promoting infiltration, and reducing the pressure on downstream drainage infrastructure.
27. Mr. Hamilton testified that he has observed the culvert at the east end of Geraldine Road flood when it exceeds its capacity. Geraldine Road is a short cul-de-sac, with the Respondent's property located near its end; drainage flows east along the south side of the road. He also testified that he has never seen the culvert that is located on the west side of Quenville Road – which intersects Geraldine Road perpendicularly and connects to the ditch at 2094 Quenville Road – overflow. Mr. Hamilton stated that the ditch system running from Quenville Road to May Road has more than enough capacity to handle any upstream flow that can flow through the 24-inch culvert that forms the outflow from the Respondent property.
28. Mr. Hamilton testified that the design of the original drainage system was adequate to handle the water draining from the Respondent property through the 24-inch culvert, but the subsequent modifications downstream, including the installation of an 18-inch culvert on May Road, have compromised the capacity of the drainage system.
29. On cross examination Mr. Hamilton stated that he did not know that he needed to have a permit from the Ministry of Transportation and Transit for discharge of his water from harvesting cranberries to the road right of way on Quenville Road. He understood that since the Ministry was the Approving Officer for the Subdivision, that it was implied he had approval.

Respondent Witness – Dan Bowen

30. Mr. Bowen stated he had worked for the Ministry of Transportation and Transit in the Courtenay District for 31 years, with experience in Development and Subdivision Approvals. He further stated that he had worked as a Land Development Consultant in the Comox Valley for the past 20 years.

31. Mr. Bowen explained that the area surrounding the Respondent farm was subdivided in several phases between the 1970's and 1990's. He stated that, at the time, subdivision approvals were the responsibility of the Ministry of Transportation and Transit, and that he and other technical staff were responsible for the approval and the establishment of roads, ditches and the associated culverts. Mr. Bowen also noted that he had worked on the residential subdivision approvals of the May and June Roads areas, with June Road running parallel to May Road to the east.
32. Mr. Bowen stated that at the time of the subdivision of the May Road and June Road areas, the Ministry of Transportation and Transit did not require permits from the farm for the discharge of water to the ditch on Quenville Road. He also stated that the drainage plan in this area was to create drainage ditches that would run along the property lines of the lots as this was the direction of the flow of the surface water.
33. Mr. Bowen testified that he visited the Respondent property and met with Jeff Hamilton and Neal Hamilton's father George Hamilton to inspect the water control infrastructure and the water release structure that was built to allow the drainage water from harvest to flow through a 24-inch culvert to the road ditch on Quenville Road. Mr. Bowen stated that that the farm's drainage infrastructure was designed and approved to establish the maximum volume of water that could flow from the farm through the 24-inch culvert.
34. Mr. Bowen testified that in his experience any downstream culvert is always equal to or greater in size to the culvert immediately upstream.
35. On cross examination Mr. Bowen testified that the area in question is sand and gravel and that there is significant water movement sub surface and that there are numerous springs and areas where subsurface water percolates to the surface, especially where the water meets the layer of glacial clay.

F. KNOWLEDGABLE PERSON REPORT (the KP Report)

36. Ms. Teasdale, the KP holds the title of "Industry Specialist - Berries" within the Ministry of Agriculture and Food (the **Ministry**), a role she has held since 2015. Prior to this, she was previously employed as an Integrated Pest Management (IPM) consultant with E.S. Cropconsult Ltd. from 2002-2015, providing pest monitoring services and management recommendations to cranberry, blueberry, raspberry, and strawberry producers in the Fraser Valley. Between 2004 and 2013, she also served as a Planning Advisor for the B.C. Environmental Farm Plan Program, supporting producers in completing self assessments and action plans for their farming operations. The KP Report dated May 15, 2024, was entered as an exhibit at the hearing.

37. The KP confirmed that she attended both the Complainants' and Respondent's properties on April 16, 2024. The KP confirmed, through her direct observations, that water flows from the south side of the Respondent property through a buried pipe to a ditch that runs north along Quenville Road.
38. The KP confirmed the direction of the flow of water east past Mr. Steven's property before the ditch meets May Road where it turns 90 degrees to flow south on the west side of May Road adjacent to Mr. Neveaux's property.
39. The KP stated that at the time of her visit she observed water approximately two to four inches below the surface of Mr. Neveaux's property in a hole that had been excavated on the northern boundary of the property.
40. The KP noted that the ditch that runs through Complainant Steven's property was clear of any debris or vegetation and culverted at both ends.
41. The KP stated that normal practice for cranberry farms in British Columbia is to use a harvest method called Wet Harvest, typically between September and November each year, wherein one or two fields are flooded at a time with up to two feet of water, in which the water is then moved to the lower elevation fields. The water is held in the last field before being released to a drainage ditch through a water release structure which includes a flood gate and an 18–24-inch culvert.
42. The KP noted that there is a risk of damage to the cranberry plants if the flood water is released either too fast or too slow.
43. The KP stated that the practices related to water management that she observed on the Respondent's farm are consistent with similar cranberry farms in British Columbia.
44. The KP provided two recommendations:
 - a) That the Respondent notify the Complainants at least three days before the release of harvest water each year. The KP believed that this would provide the neighbours an opportunity to remove debris or grates that may be blocking culverts prior to the release of the harvest water; and
 - b) That the parties request the Ministry of Transportation and Transit to maintain the ditches and culverts in the Right of Ways, including the ditch crossing Mr. Steven's property.
45. During cross examination the KP stated that that a cranberry farmer can control the volume and speed of the release of flood harvest water to off-farm ditches and drainage systems but must also take into consideration that the cranberry plants cannot remain under water for periods longer than 10 days without risking damage to the plants.

G. ANALYSIS

46. These complaints were filed pursuant to section 3(1) of the FPPA which reads as follows:
- 3(1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.
47. Normal farm practice is defined in Section 1 of the Act as follows:
- Normal farm practice means a practice that is conducted by farm business in a manner consistent with:
- a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
 - b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (a).
48. When a person files a complaint under the FPPA, section 3 requires the complainants to demonstrate both that they are directly aggrieved by the complained of disturbance (which arises out of a farm operation, carried on by a farm business) and that the complained of practice is inconsistent with normal farm practice (proper and accepted customs and standards as established and followed by similar farms in similar circumstances).
49. If, after a hearing, the Panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, the complaint is dismissed. If the disturbance results from a practice that is not a normal farm practice, BCFIRB may order the farmer to cease or modify the practice.

Are the Complainants aggrieved by the runoff water from the Respondent's farm?

50. Both Complainants provided compelling evidence during their testimony and in their written submissions, including time-stamped photographs related to the flooding of their properties. Although the flooding was claimed to have occurred annually since 2019 through 2023, and may not always have been directly caused by harvest water draining from the Respondent's farm, the Panel is of the opinion that the event that occurred on October 20, 2023, demonstrated that the release of water from the farm was almost certainly a contributing factor in that flood event. The Panel finds the Complainants have met the evidentiary burden of demonstrating that they were aggrieved by a disturbance of drainage water released into the ditch by the Respondent, which subsequently caused flooding on both Complainants' properties.

Are the Respondent's water release practices consistent with normal farm practice?

51. To determine whether a complained of practice falls within the definition of normal farm practice, the Panel must determine whether the practice is “consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.”
52. This determination requires a consideration of general industry practices, together with the specific contextual circumstances of the Respondent farm in relation to properties around it. The analysis may involve asking what, if any, reasonable steps the Respondent should take to mitigate disturbances resulting from the farm operations – sometimes called the “good neighbour principle”: see *Harrison v. Mykalb*, (January 30, 2013), *Ollenberger v. Breukelman* (November 18, 2005), and *Eason v. Outlander Poultry Farms Ltd.* (March 10, 2000).
53. The normal farm practice test was discussed in detail in *Swart v. Holt*, January 12, 2016 at para. 89 to 96. We adopt those paragraphs in their entirety, and we quote from paragraphs 96 and 97 of that decision:
 96. It is important that the test for normal farm practice be clearly stated. It is pivotal to the operation of the *FPPA*. BCFIRB has been given primary responsibility to interpret this highly specialized and ambiguous term.
 97. BCFIRB is entitled to adopt any reasonable construction that it considers best achieves the objects of the *FPPA*. In our view, and to address any confusion that may arise from the Holt Court Decision on this issue, we find that the principles set out in *Pyke* as adopted in BCFIRB decisions, are the principles that best achieve the objects of the *FPPA*. Only a fully contextual approach can meaningfully account for the words “proper” and “similar circumstances” in their context, and achieve the balancing of interests that is inherent in the very creation of a complaints structure. This also means, as set out by the BC Supreme Court in *Ollenberger* that this panel will consider if on application of the “good neighbour principle”, it is required to go beyond accepted farm practices to order a farm to do something more in order for its practices to be consistent with normal farm practice. That is the approach we have applied to this case.
54. In both the KP Report and her oral testimony, Ms. Teasdale confirmed that the majority of cranberry farms in British Columbia use the wet harvest method between September and mid-November, which is the method employed by the Respondent. The KP report explains that cranberries are harvested by flooding one or two fields at a time, continuing the process until all the fields have been flooded and harvested. All of the harvest water is then held in the final field or in a ditch, before being released through a single flood gate. The KP confirmed that the Respondent's practice aligns with normal wet harvesting practice, and this determination was further supported by the Respondent's testimony and the WWK Plan.

55. However, the complex hydrology and subsurface conditions, combined with intense rainfall events represent particular circumstances that have to be considered by the Panel and complicate the finding of normal farm practice in this case.
56. The Panel finds that, although the practice of releasing harvest water into the local ditch system is typical in British Columbia, it was a contributing factor in this instance to the flooding of downstream properties. The Panel further finds that the flooding of the Complainants' properties may have been further complicated by a lack of maintenance of the overall drainage system and by changes to the originally approved drainage design.
57. Having considered all of the relevant circumstances, the Panel finds that the recommendations made in the KP Report are in accordance with the "good neighbour" principle and are sufficient modifications to the Respondent's water management practice to account for the particular circumstances in this case. Those recommendations are reflected in the order that follows. The Panel otherwise finds that the Respondent's release of harvest water to the drainage system to be a normal farm practice and that the methods are consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.

H. ORDER

58. The Respondent will notify the Complainants at least three days in advance of releasing harvest water to the ditch system.
59. The Respondent will provide the Complainants with a means to communicate directly with any feedback after the release of harvest water if the Complainants observe that the ditch system is functioning beyond its capacity and is likely to flood.
60. The Respondent will apply the “good neighbour principle” and take whatever means possible to reduce the volume of water discharged to the ditch system from the farm, if there is a potential for downstream flooding.
61. There is no order as to costs.

Dated at Victoria, British Columbia, this 29th day of September 2025

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Gunta Vitins, Chair & Presiding Member



Neil Turner, Vice Chair



Pawan Joshi, Member