

On March 1, 2006, United States District Court (Eugene) Judge Ann Aiken entered her ruling granting the Swalley Irrigation District the expressed right to convert the first 5 miles of the Swalley Main Canal to an underground, pressurized pipeline. The authority for the decision is granted under the federal act of March 3, 1891, which provided the right-of-way.

This is a decision of statewide significance because there have been no prior cases in Oregon that established the right to pipe canals under the 1891 federal right-of-way act and therefore there had been a question about whether the act could be challenged. This federal decision now clarifies that canals in Oregon can be piped under that authorization.

The district has been requested to further address a minimal amount of lands adjacent to the canal where the State of Oregon acquired lands from the United States before the federal law of 1890 was enacted. Because this issue was not part of the original complaint, the district will provide the court relevant information for the decision-making within the next 30 days. The district relies upon Oregon law enacted in 1891, 1899 and 1905 to establish the right. These state laws are similar to the federal right-of-way act of 1891.

There was a question of whether the district really owns the lands under fee title versus right-of-way but the district told the court that it did not want to address that question as it didn't make a difference. The district didn't want to specifically own the property and asked the judge to defer to use of the right-of-way.

The district is looking to proceed with the project following this year's irrigation season.