

EDITORIALS

A legal victory for the Deschutes

Since the Deschutes River can't speak for itself, we'll take the liberty of reacting on its behalf to a recent ruling by a federal judge in Eugene: **Yippee!**

The March 1 decision by Judge Ann Aiken confirms Swalley Irrigation District's right to pipe the first five miles of its main canal, a project that will allow the district to divert less water from the Deschutes. This, for obvious reasons, is good for the river. And what's good for the river is good for all of us who like to fish in it, hike next to it or just look at it.

Without the installation of pipe, large quantities of water will continue to leak through the district's canal during the summer irrigation season. The water, which resurfaces many miles downstream, doesn't exactly go away. But the combined leakage of the region's many canals reduces a sizable section of the Deschutes to a sad trickle for several months every year. Swalley's project would restore a small, but important, part of that flow.

But it does have its enemies, which is why Swalley took the matter to court. The district's canal runs through a right of way on other people's property, and some of them don't want the open canal -- a summertime water feature -- to disappear. Therefore, they've argued that the 1891 federal law providing Swalley's right of way doesn't give the district the right to pipe. Judge Aiken says it does, however, "provided that the pipeline conversion does not increase the burden on...[the opponents'] property interests." It's hard to see how a buried pipe would do that.

Swalley's victory, unfortunately, was not complete. According to the opinion, the federal law granting right of way doesn't apply to federal land given to the state before the law was adopted in 1891. A small amount of land adjacent to Swalley's canal was once given to the state in this manner, according to the district. But even here there's little reason for concern. The state long ago adopted laws parallel to the federal law granting right of way, says Swalley General Manager Jan Lee. The district has given the court the material necessary to extend the decision to state land, and Lee says she expects a favorable outcome within a month or so.

Not long after that, hopefully, the district will start buying pipe. As long as the district secures the funding -- Lee believes it will -- some of the pipe will be installed after this irrigation season, and the rest after next season. Thus will the Deschutes gain an extra 20 cubic feet per second (about 9,000 gallons per minute) of badly needed water. That doesn't sound like much, but the section of river that would be affected now flows at about 80 cfs during the summer, and this owing mostly to contributions by the region's irrigation districts and a leasing program run by the Deschutes River Conservancy, says Lee.

With our without Swalley's project, the Deschutes below Bend will continue to flow at a significantly lower rate during the summer than the winter. Yesterday, the flow below Bend was about 520 cfs. Still, summer flows have improved quite a bit in recent years thanks to the efforts of the region's irrigations and groups like the DRC. And we believe they'll continue to improve, one legal battle -- at a time.