

SWALLEY IRRIGATION DISTRICT

RESOLUTION NO. 16-06

RESOLUTION CONCERNING THE MAINTENANCE AND IMPROVEMENT OF INFRASTRUCTURE BEYOND THE DISTRICT'S POINT OF DELIVERY.

WHEREAS, Swalley Irrigation District (the "District") has the statutory authority to manage and conduct the business and affairs of the District, including the authority to establish equitable bylaws, rules and regulations for the administration of the District and for the distribution and use of water within the District boundaries; and

WHEREAS, District assumes no responsibility for the delivery of water beyond the point of delivery (the "POD") of District water to its users, patrons, landowners and/or user groups (collectively referred to as "Users"). Beyond the POD Users are primarily responsible for the operation and maintenance of delivery system infrastructure. Notwithstanding this division of primary responsibility, the District is aware that the improper, inefficient or unauthorized use of systems and infrastructures beyond the POD can have detrimental impact on the District's ability to efficiently provide consistent reliable irrigation water to all District Users.

WHEREAS, pursuant to authority conveyed to Oregon Irrigation Districts by ORS Chapters 540.420, 540.430, 540.440, 545.221, 545.237, 545.279, 545.287, and 545.293, and the case law interpreting these provisions, the District is empowered to enter on to Users' property to improve, maintain or replace certain irrigation systems and infrastructure beyond the POD when, in the District's estimation, this involvement in systems and infrastructure beyond the POD is necessary to avoid water waste, inefficiency, detrimental practices, conflicts and/or non-use that threatens the efficient, consistent, and reliable delivery of irrigation water to District Users.

WHEREAS, the District's involvement in irrigation conveyance systems beyond the POD can take any of the following actions, separately or in combination with one another: (1) require Users to make improvements to their systems and infrastructure in accord with District requirements as a condition of continued irrigation water delivery; (2) District performance of work on systems and infrastructure beyond the POD with the resulting expenses for this work billed to the benefited Users on a proportionate basis; and/or (3) discontinue irrigation water delivery to Users until problems in systems and infrastructure beyond the POD are satisfactorily resolved. The District also has the authority under Oregon law to bill, assess, collect and file liens for all reasonable costs associated with any of the foregoing actions implemented pursuant to this resolution.

WHEREAS, the District owns 28 miles of irrigation delivery system consisting of a main canal and pipeline, secondary laterals, and tertiary sub-laterals that deliver water to approximately 4,300 acres of land. Nearly 50% of the District's Users – representing approximately 1,888 acres of water rights – receive their irrigation water from one of 53

private systems beyond the District's POD. These Users are completely dependent upon the District's infrastructure and a private conveyance system to receive water on their property. Not included in this 50% of District Users are 75 Users who receive their District water via Avion Water Company, or 33 Central Oregon Irrigation District ("COID") Users who receive District water via a private conveyance system.

WHEREAS, of the aforementioned 53 private conveyance systems, 5 of them are fully piped, and 3 are partially piped. The balance of these conveyance systems are simple earthen ditches. Some ditches are up to several hundred feet in length, while others are up to two miles long with as many as 30 individual water users inducing high systemic water demands. It is estimated that the total length of these private conveyances are approximately equal in total length to the District-owned 28 mile long delivery system. The high number of customers dependent on private conveyances is due to the fact that since the District was first formed, large farms have been subdivided into smaller parcels dependent upon the same private conveyance systems that were once used to serve a single farm. As a result, instead of one farmer's family maintaining the private ditch serving its land, present day practices find anywhere from 2 to 30 neighbors responsible for maintaining the same system.

WHEREAS, The Deschutes Basin Habitat Conservation Plan (the "HCP") will likely contain reasonable, practical, and mandatory measures that irrigation districts must implement to improve water use efficiency past the POD. The District seeks to implement compliance standards that will meet HCP measures and encourage efficient use of water in the private conveyances. The final HCP may result in a different approach and, to the extent this occurs, this District policy will be amended and or revised to conform to these changes. It should be noted that improved water use efficiency in the private conveyances does not necessarily translate to an instream benefit.

WHEREAS, implementation of a policy to reduce or eliminate inefficient private conveyances will provide several immediate benefits to the District including; (1) Users will know that they are receiving the amount of water for which they pay; (2) new property owners will not be upset that they bought property with inadequate means of irrigation water delivery; (3) concerns about loss of water rights for lack of beneficial use will be ameliorated; and (4) reduced calls for help from District staff will save valuable time and resources that can be directed to larger District concerns. Furthermore, if Users on a private conveyance are willing to have their duty reduced (gallons per minute per acre according to their intended type of use), and the saved water can be made available for instream benefit and/or to a junior water right holder using a District temporary transfer mechanism, outside parties may be willing to pay for piping the users' private conveyance system. In addition, via incentives and subsidized programs, additional measures may be available to further enhance efficiencies and reduce operation and maintenance costs for Users.

WHEREAS, a District program dedicated to enhancing the function and efficiency of private conveyances, will: follow state statutes regarding private ditches; implement

the appropriate and reasonable actions to meet the commitments made in the HCP; be available to all affected Users; and allow exploration of no-cost or cost-sharing resources and programs that may be available to assist the District and its Users, including the possibility that each of the District's piping projects for its main canals and laterals may offer provisions for the inclusion of private conveyance upgrades within the scope of work for canal and lateral construction contracts.

WHEREAS, the District's Private Conveyance Improvement Program is designed to implement, as necessary, the actions generally described above to make improvements to, and/or enhance private irrigation conveyance systems and infrastructure beyond the District's POD. An outline of this Program is set forth in Exhibit 1, which is attached hereto and by this reference incorporated herein.

NOW, THEREFORE, it is resolved as follows:

1. The above recitals are hereby adopted by the District Board as the basis and rationale for implementing the Private Conveyance Improvement Program to create more efficient, economical and reliable irrigation water delivery throughout the District.

2. The District Board hereby authorizes the District Manager to take all necessary and reasonable actions to implement the Private Conveyance Improvement Program, as outlined in Exhibit 1 attached hereto, as soon as practicable.

DATED this _____ day of _____, 2016.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

Outline of Private Conveyance Improvement Program and Procedures

A. The Program.

The Program consists of: on-going educational opportunities made available to all Users on private conveyances through notifications, meetings, and short education sessions; District analyses of private conveyance conditions; requirements that private conveyances be upgraded to current District standards consistent with state statute; technical and financial assistance to the water users; and exploration of the opportunities for increased District financial commitment to take action to make private conveyance improvements where necessary.

B. The Procedures.

1. The District will send a letter to all Users on private conveyances, and to the non-water using landowners upon whose property the private conveyance traverses, seeking cooperation and explaining why increased District effort regarding private conveyance efficiency is necessary as a matter of law, public policy, and cultural compatibility. A copy of the Board policy will be included in this notice.

2. Periodically thereafter, the District will notify all private conveyance water Users, and non-water users upon whose property the private conveyance traverses, of this policy and their responsibilities under state statute to keep the private conveyances in good working condition and to allow access through private lands to the conveyances for all Users served by such conveyances. To account for transfers in property ownership, notices may be provided on an annual basis.

3. The District, as it may reasonably do so, will analyze the conditions of all private conveyances, comparing them to the Natural Resources Conservation Service Field Office Technical Guide Specifications and Standards (NRCS Standard), and report the results to the District Board of Directors. The NRCS Standard contains directives that the private conveyances must be in good working order so as to prevent loss of water, permit regular flow, and have an acceptable means of measurement at each individual landowner turnout. This Standard may not require more than state statute requires, but compliance up to and exceeding State standards will be strongly encouraged.

4. After the first analysis described in item 3 above is completed for each private conveyance, the District will provide notification to the affected Users (and, to the non-water using landowners upon whose property the ditch traverses) of the findings, citing any necessary improvements needed; options and resources available to Users to make the minimum necessary improvements (such as external financial and technical resources); landowner obligations under State statutes to implement and/or fund these actions; and a reasonable date by which the actions must be completed. These

notifications may also state that if there is lack of action by landowners or Users, the District may make the improvements needed and bill the respective Users for the costs of those improvements, in accordance with ORS Chapters 540 and 545.

5. Consistent with past and present practices, District staff will meet with Users upon request to foster communication and progress toward the program goals for all Users.