

Judge rejects arguments against irrigation pipeline project

By **MATEUSZ PERKOWSKI**
Capital Press

Opponents of an irrigation pipeline project in Central Oregon are incorrect that it violates an easement meant for open canals, according to a federal judge.

U.S. Magistrate Judge Mustafa Kasubhai has determined the Tumalo Irrigation District hasn't exceeded the scope of an easement across opponents' properties by replacing open canals with piping.

The irrigation district is installing pipelines to conserve water that would otherwise be lost to seepage and evaporation, but opponents fear the loss of an open canal will harm vegetation and reduce their property values.

Kasubhai has recommended rejecting the arguments of nine landowners who filed a complaint seeking to block the pipeline project, but the ruling must still be affirmed by U.S. District Judge Anne Aiken to have legal effect.

"Placing irrigation pipes below ground is a reasonable modification that falls squarely within the easement's purpose," Kasubhai said.



Excavation crews place a section of pipe in the Tumalo irrigation canal. A federal judge has rejected arguments that replacing open canals with pipelines violates an easement across the properties of project opponents.

Ryan Brennecke/EO Media Group

The argument that landowners will be "unnecessarily burdened" by diminished property values should also fail, he said. "However, the removal of an unintentional benefit to servient estate holder is insufficient to establish an increase in burden."

Opponents of the project claim the irrigation district's easement across their properties does not per-

mit digging below the bottom of the canal to install the pipeline. They pointed to language governing the easement that limits its scope to 50 feet "on each side" of the canal.

The judge said the 50-foot limit applies vertically as well as horizontally, which means they've wrongly interpreted the easement's terms.

"Critically, plaintiffs' interpretation effectively replaces the word

'each' with 'either' in an attempt to limit the geographic scope of the easement to the water's horizontal margins," he said.

The Tumalo Irrigation District, which manages 80 miles of canals and pipelines that serve about 7,400 acres, typically lost half the water running through open canals.

Such losses disrupt irrigation when below-average snowpacks

reduce the water supply, with federal protections for the threatened Oregon spotted frog further aggravating the problem.

Opponents filed a lawsuit in 2020 against replacing open canals with pipelines because the lack of seepage would likely kill century-old Ponderosa pines and other plants along the canal, damaging wildlife habitat and property values.

"The burden is the loss of hundreds of thousands of dollars in property value. It cannot occur in this way if the burden on the servient estate is increased," said Esack Grueskin, attorney for opponents, during oral arguments earlier this year.

The irrigation district countered that irrigation districts have historically built elevated pipelines to cross rivers and other obstacles, just as it's now common to rely on easement to install pipelines underground.

"The method of delivery may reasonably change over time," said Mark Reinecke, the irrigation district's attorney. "There is nothing to say it cannot be done below the bottom of the canal or anything else."

Oregon farm education proposal doesn't meet land use criteria

By **MATEUSZ PERKOWSKI**
Capital Press

Oregon's Marion County wrongly approved an agricultural education program on a 75-acre property in an "exclusive farm use" zone, according to a land use ruling.

The landowners planned to charge fees for children to enter the property near St. Paul, Ore., where they'd learn about crop production, view wildlife and engage in seasonal activities, such as corn mazes and pumpkin tossing.

Last year, the county's board of commissioners approved a conditional use permit for "Seasons at the Red Oak Farm," overruling planning officials, who said the proposal didn't meet land use criteria.

The state's Land Use Board of Appeals has now ruled the program is a commercial activity that isn't sufficiently based on an underlying farm use, since the landowners intended to grow plants for demonstration and education rather than to profit from their sale.

"Intervenors did not provide substantial evidence to demonstrate that the field crops were

grown for the primary purpose of obtaining a profit from their harvest and sale," LUBA said, referring to the landowners.

The educational program's potential to produce "future agricultural workers" by sparking their interest in farming also doesn't justify the conditional use permit, the ruling said. Encouraging an interest in farming may be a "laudable" goal but it does not actually meet a "farm use demand."

"The hypothesized connection between participating in the program and a future career in agriculture is too remote and speculative," LUBA said. "Some children who participate in the program may choose to work in agriculture and others may choose a different career."

The educational program would not support or supplement farm uses, but instead it would be the property's primary use, which means it's "the tail wagging the dog," the ruling said.

Aside from these problems, LUBA determined the county did not satisfy the "farm impacts test" in approving the program's permit. Under this standard, a conditional use cannot force a significant change to farm practices or increase their cost.

Washington to spray for Japanese beetles

By **DON JENKINS**
Capital Press

The Washington State Department of Agriculture on May 2 began what it expects to be a multi-year campaign to eradicate Japanese beetles in Yakima County.

A contractor will spray the insecticide Acelepryn to kill grubs in a 49-square-mile area that includes the town of Grandview and the surrounding area. The spraying is expected to last through the summer.

The department has received permission to spray from 1,504 landowners and awaits to hear from 2,824 others, department spokeswoman Amber Betts said Wednesday.

Eight landowners have denied permission. Betts said the department won't force its way onto the properties by invoking its broad police powers to spray for insects.

The department anticipates spraying next year and hopes the reluctant landowners will change their minds, Betts said. "We're hoping we're going to be able to get 100% participation eventually, with consent," she said.

Oregon and Idaho have battled Japanese beetles, but Washington has not until now. The agriculture department trapped more than 25,000 of the invasive pests last year in the Grandview area.

Japanese beetles have wide-ranging tastes that include some of Central Washington's most valuable crops, such as apples, grapes and hops. The department will spray around homes and businesses, but not on farms.

Japanese beetles emerge and begin flying in June. Highly infested properties may receive more applications during the flight season, according to the department.

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