

Water

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But people living near the canal — mostly residents of Deschutes River Woods and Woodside Ranch — are fighting the piping plan in order to retain some seepage. Save Arnold Canal, a community-led grassroots movement, believes seepage will keep the ground saturated in the months when water is available. Seepage is needed to protect the micro-habitat that runs along the canal, they say.

Save Arnold Canal has a website to promote alternatives to piping and a lawyer, too. Instead of a pipe, the group wants the canal lined with semi-permeable concrete to conserve most of the water, but also allow around 30% to seep into the ground to charge the shallow aquifer.

“Everyone wants to conserve water for the sake of the Deschutes River. But what will be lost when Arnold Irrigation pipes their main canal? Twelve miles of animal habitat, thousands of mature ponderosa pines, and scores of functional wells,” said Geoff Reynolds, a group supporter.

Alan Keyes, another resident in the area, worries most about the fate of mule deer and other wildlife that occupy his neighborhood. Cutting off the water flow will permanently disrupt the local habitat and drive the animals away, he said.

“Wildlife share our unique environment and contribute to its character,” said Keyes. “Drive them away and you further chip away at the uniqueness of our area.”

Compromise solution sought

Mark Elling, president and board member of Save Arnold Canal, says residents in the area are concerned about property values, community aesthetics, and the local ecosystem. But he adds that an open canal instead of a pipe offers benefits across the Deschutes Basin, including wildlife habitat, accessible water for fighting wildfires, and groundwater.

“We think for everyone’s sake, whether it’s keeping water in the reservoir for threatened species habitat in the winter time or transferring water to North Unit in Madras, we think there are other ways to achieve that, which don’t have the collateral damage of the pipeline,” said Elling, whose property backs up to the canal.

Elling wants Arnold Irrigation District to consider lining the walls of the canal with shotcrete, a form of concrete, instead of enclosing the canal in a high-density polyethylene pipe. Shotcrete will be cheaper compared to piping, he believes, even if it needs to be replaced.

A shotcrete-lined canal can also be made permeable to allow some water to seep into the soil but also conserve more water than the current canal, which is mostly unlined.

“Our group is advocating for the more commonly applied non-membrane style of shotcrete in at least a three-inch layer,” said Elling. “By avoiding the membrane there’s still some amount of seepage to do less damage to trees and wells, and it’s much cheaper without the membrane.”

The geomembrane mentioned by Elling is basically a giant plastic sheet used as a waterproof barrier that can be installed underneath a layer of shotcrete. It would reduce

leakage into the soil to small amounts — which is good for water conservation — but does not achieve the Save Arnold Canal group goal of allowing 30% seepage to sustain the canal-side ecosystem.

Steve Johnson, district manager for Arnold Irrigation District, says simply lining the bed of the canal with shotcrete, with or without a membrane, would require more maintenance than the piping option. Funds for any repairs aren’t guaranteed, he said. Piping saves 100% of the water from both seepage and evaporation, he said.

As for the green aesthetics that the seepage provides, Johnson notes for much of the year the idyllic flowing stream running behind people’s homes is nonexistent. Certainly, during the past three years of drought, the district had to turn off the water at record early dates.

“Their water feature only has water in it for three and half months, and it’s empty for eight and a half,” Johnson said. “How attractive is that ditch for eight and half months of the year when it doesn’t have any water in it?”

Threatened species

While farmers will benefit from the proposed pipe and more water later in the irrigation season, environmentalists and ecologists say they are pleased with the anticipated benefits for the Deschutes and the aquatic species that are trying to eke out an existence in the diminished river. Energy use will also be lowered because the pressurized pipe eliminates the need for pumps.

The piping project has the backing of the Coalition for the Deschutes, Central Oregon LandWatch, and the Deschutes River Conservancy, at least compared to lining options that require more maintenance and less water conservation.

Up to 10,446 acre-feet of water could be available during the winter months if the piping project moves ahead. An acre-foot is the amount of water than can fill up one acre of ground with one foot of water. This will be accomplished through an exchange with North Unit Irrigation District, and will also provide North Unit farmers with more water during the irrigation season.

Support by biologists and ecologists for piping comes as no surprise given the tendency among local environmental nonprofits to back projects that increase the level of the local rivers at any cost.

Oregon Department of Fish and Wildlife says piping is safer for wildlife. Rather than a safe corridor, the canals are seen as a hazard that can trap deer in both winter and summer, especially if the canal is lined with concrete. As for the argument that the canals provide drinking water, ODFW field biologist Andrew Walch said mule deer and other animals will simply find water elsewhere.

“There are usually irrigated fields, ponds, and yards nearby that provide sources of water,” Walch said. “It just may shift the distribution and patterns of wildlife that folks are used to seeing on their property.”

U.S. Fish & Wildlife also has clear motivations to back the piping plan. The agency is tasked with protecting threatened species such as the Oregon spotted frog and bull trout. Closing canals support



A small section of Arnold Irrigation District’s main canal lined with cement near Bend.

Ryan Brennecke/The Bulletin

the goals laid out in the Deschutes Basin Habitat Conservation Plan, approved by U.S. Fish & Wildlife in 2020. By not adhering to the conservation plan, irrigation districts risk losing their “incidental take” permit which allows them to function for the life of the 30-year agreement.

For residents in the area, the pipe’s purported benefits for rivers offer cold comfort when their community is on the precipice of drastic change. Their grievances echo complaints lodged by several patrons of Tumalo Irrigation, who filed a lawsuit in 2020 over the impacts a piping project caused in their community. That suit could portend what may happen in Arnold.

Brian Sheets, the agriculture and water rights lawyer who represents the Save Arnold Canal group, says the group is open to discussing a variety of water conservation options

but piping isn’t one of them due to “environmental considerations” and the impacts on the local ecosystems.

“Piping will be taking water away from quite a few trees. It will be taking water away from well recharges. It will be taking water away from riparian habitat that goes through the area,” said Sheets, who is based in Ontario, Oregon. “We don’t believe that Arnold Irrigation District has taken into account all the different alternatives that can be used to mitigate their losses and have a win-win situation for everybody.”

Cadillac Desert

Deschutes County Forester Ed Keith — who serves as a liaison between federal, state, and local agencies to both manage forests and prevent fires — agrees with the Save Arnold Canal group that tree loss will likely occur.

But Keith, the county for-

ester since 2012, says the trees along the canal are growing at unsustainable levels. If they can survive without the water from the canals, they will, he said.

“Otherwise, they shouldn’t be there to begin with. We live in a desert,” said Keith.

Instead of maintaining the canal’s artificial environment, Keith said the priority should be on minimizing impacts on fish and wildlife in the Deschutes.

He described a host of commonly cited negative impacts including uncommonly high flows in the summer, uncommonly low flows in the winter, increased sedimentation, and the resultant negative impacts to fish habitat and water quality.

“The Cadillac Desert can’t keep running forever,” said Keith, referring to the 1986 book by Marc Reisner, which chronicles the history of ir-

rigation in arid parts of the American West.

Keith also threw cold water on the idea that the seasonal waterway needs to be preserved for the sake of trees that are growing beyond their natural range.

“It seems to me that these people are expecting personal benefits from canals that happen to run through their properties by expecting them to continue to operate with a design more than a century old, at no cost to them, and severe negative cost to the public resources,” said Keith. “These include water, fish, and wildlife, and the agricultural lands that depend on the efficient delivery of water.”

Save Arnold Canal may not have garnered widespread backing from Bend’s environmental groups and agencies but that has not prevented its supporters from backing down.

Keyes, one of the neighborhood residents, concludes that the district just isn’t listening to what residents have to say. He calls the district’s plan “short-sighted” and in total disregard of the long-term impact on his community.

“If AID’s piping proceeds as proposed, it will leave Bend area residents, visitors, and future generations, looking around and asking, what happened to the Bend we used to love?” said Keyes. “But by then, it will be too late.”

■ Reporter: 541-617-7818, mkohn@bendbulletin.com

ASK A LEGAL PROFESSIONAL

ESTATE PLANNING



Melissa Lande
Attorney at Law

Question: My brother has been diagnosed with dementia. He would like me to assist him with his financial and medical decisions. Although he is competent right now, what should he do to allow me to manage his affairs in the event that he is unable to manage them himself?

Answer: Your brother should execute an Advance Directive, Durable Power of Attorney, Medical Authorization, and Will or Revocable Trust. He can appoint you as his health care representative to make health care decisions for him in the event he is not competent to make his own decisions. Also, he can nominate you as his agent under a Durable Power of Attorney. This would give you the authority to manage his financial affairs if he was not able to do so for himself. In addition, he can sign a medical authorization so that you can have access to his medical records and his physicians. Finally, he should execute a Will or Revocable Trust if he has any assets that will need to be transferred after his death. Since he can only sign these documents if he understands what they mean, it is advisable not to wait.

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REAL ESTATE



Craig Edwards
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Question: I’m selling my house. How should I set the earnest money deposit amount?

Answer: Make a reasonable estimate of the amount you’ll lose if your buyer terminates the purchase for any reason other than as permitted in your sale agreement. Include costs and expenses you’ll incur while your house is off the market. Consider additional marketing costs for your current property, and higher acquisition costs for your replacement property. Consider whether housing prices are generally increasing or decreasing, and whether a new purchase offer will be high enough to cover your losses. If the deposit amount won’t cover those costs, it’s too low. If the deposit greatly exceeds your actual losses, a court may disallow it as an unpermitted penalty. Talk with a real estate professional before you set the amount.

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LONG-TERM CARE



Will Dennis
Attorney at Law

Question: Do my Estate Planning Documents authorize those I have appointed to do what is needed to carry out Long Term Care solutions?

Answer: Many Trusts and Powers of Attorney (POA) do not provide the level of flexibility needed over your assets for Long Term Care planning solutions. Your Trust and POA should permit your representatives to sell, purchase, exchange, replace, transfer, or gift your assets to best manage long term care costs and protect assets. There are cases where a solution exists, but the Trust or POA do not provide the authority or power over the assets to take advantage of the solution. Financial institutions are getting stricter about what satisfies them. Make sure your Trust and POA gives your representatives the power needed over your assets to plan and solve Long Term Care problems. Find out if your documents are right when it comes to Long Term Care. I offer a no-charge initial consultation to get you headed in the right direction.

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