

**Exhibit A: Evidence of Use Affidavit**

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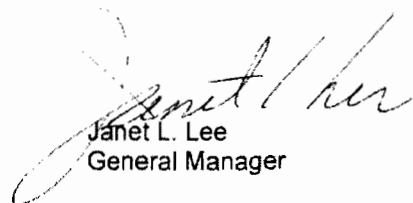
July 27, 2006

### EVIDENCE OF USE

The Main Canal, which will be piped to conserve water, is the main artery of Swalley's delivery system. All of the laterals branching off from the Main Canal receive water withdrawn at Swalley's main point of diversion from the Deschutes River. Therefore all deliveries in the system are tied to the Main Canal at some junction.

The full diversion rate and duty was diverted in 2005 as evidenced by the local watermaster. Swalley has met the ready, willing and able requirement not only in 2005 but in many of the last irrigation seasons over the 20 years' prior to this season as Swalley does not have a storage facility to provide supplemental water.

Swalley serves 736 customers.



Janet L. Lee  
General Manager

Phone: 541/388-0658  
Fax: 541/389-0433

64672 COOK AVENUE  
SUITE ONE  
BEND, OREGON 97701

[www.swalley.com](http://www.swalley.com)

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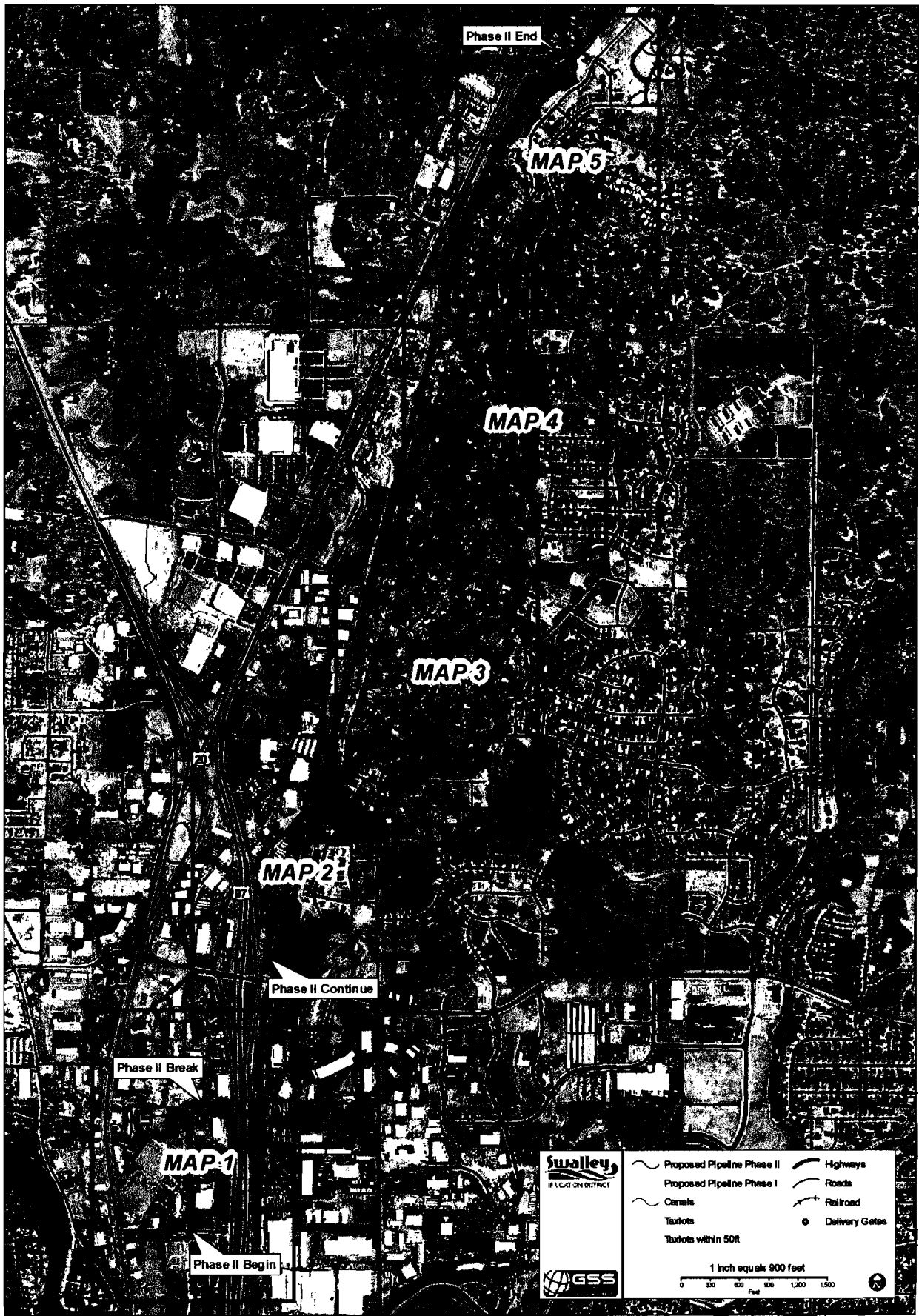
**Exhibit B: Map of Swalley Main Canal Piping Project (Phase II)**

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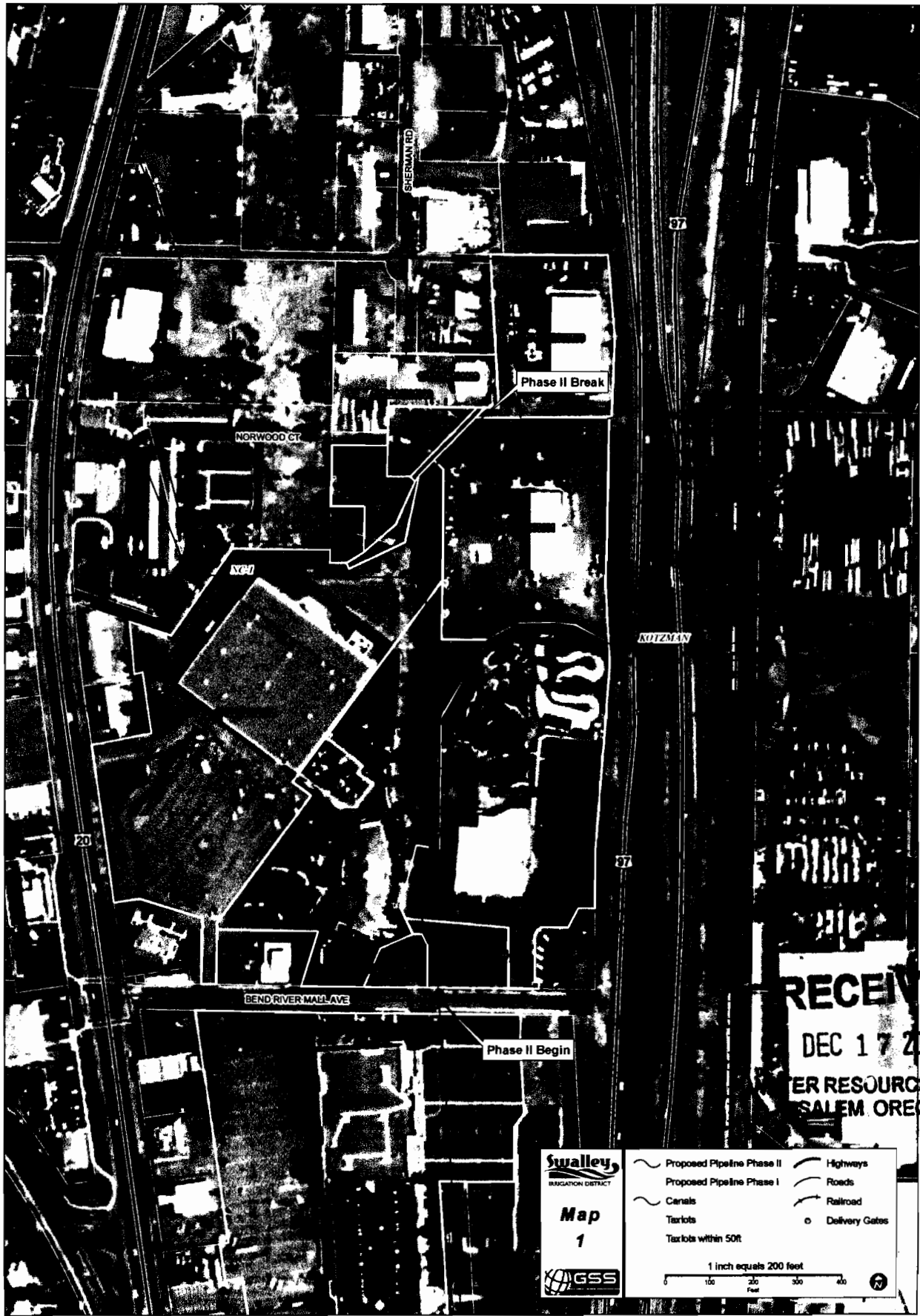
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SWALLEY IRRIGATION DISTRICT Phase II Proposed Pipeline Overview



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**Swalley**  
 IRRIGATION DISTRICT

**Map 1**

GSS

- ~ Proposed Pipeline Phase II
- ~ Proposed Pipeline Phase I
- ~ Canals
- ~ Taxlots
- ~ Taxlots within 50ft
- ~ Highways
- ~ Roads
- ~ Railroad
- o Delivery Gates

1 inch equals 200 feet

0 100 200 300 400 Feet

DISCLAIMER

MAP CONTACT

DISTRICT CONTACT

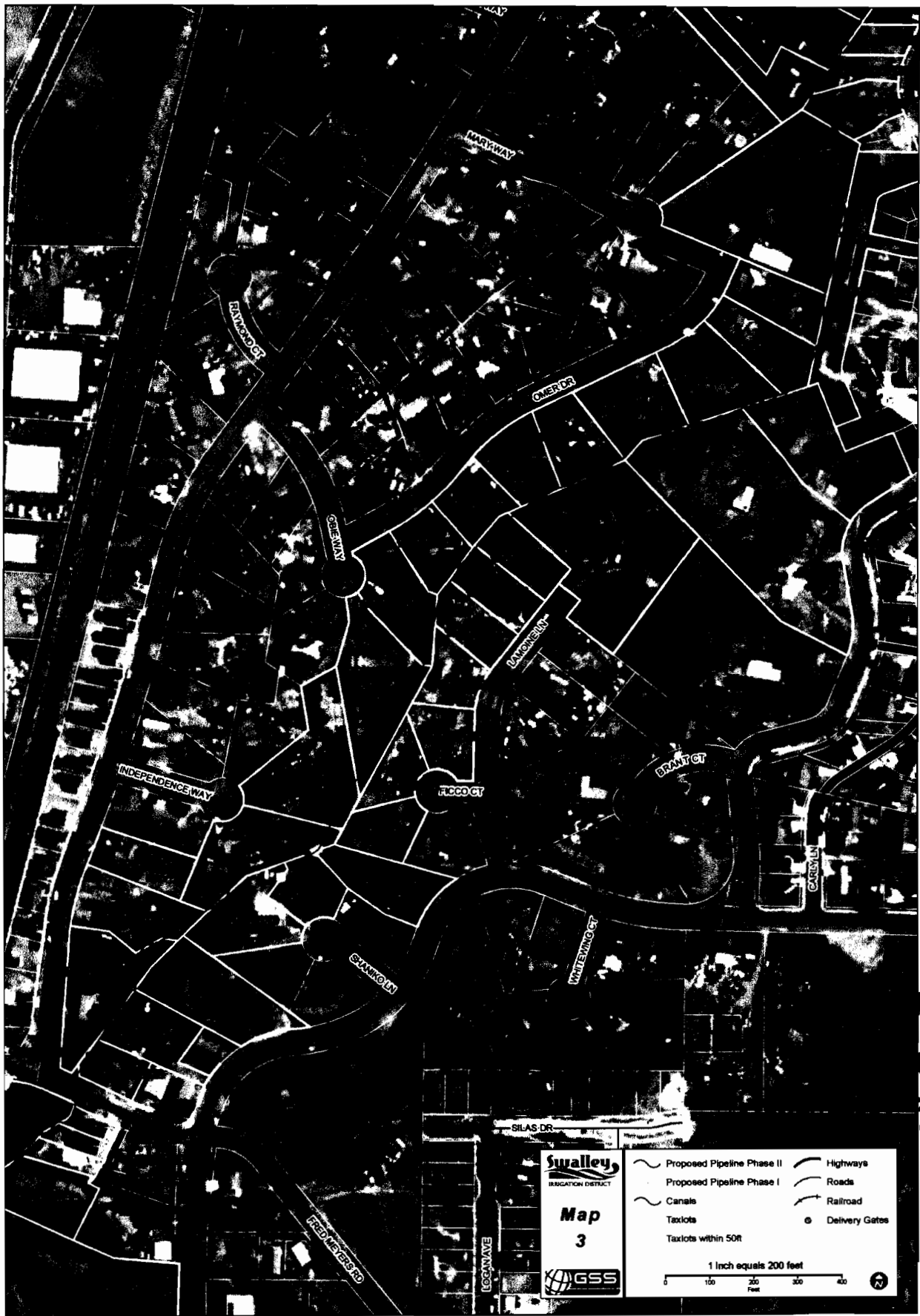
DATA SOURCE(S)

SOFTWARE

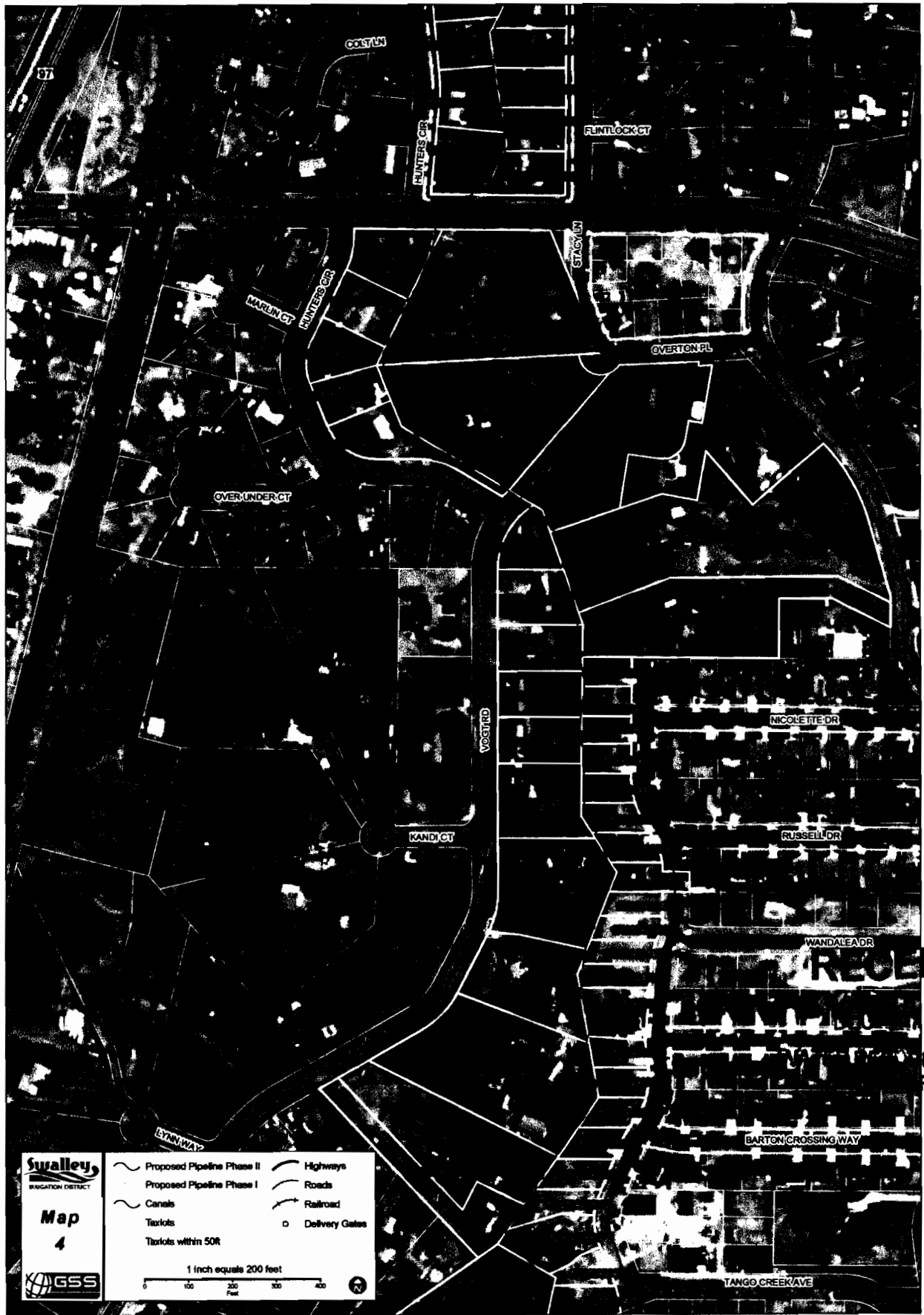
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**Exhibit F: SID Conserved Water Policy**

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## Swalley Irrigation District Conserved Water Policy

Adopted April 19, 2005

### Authority & Purpose for Policy

The Board of Directors (**Board**) of the Swalley Irrigation District (**SID**) is required to adopt a Conserved Water Policy (**Policy**) pursuant to Oregon Administrative Rule (**OAR**) 690-018-0025. The rule requires that the District adopt a policy for transfers for allocation of conserved water pursuant to Oregon Revised Statutes (**ORS**) 537.455 to 537.500.

### Conserved Water Program

The state's "conserved water program" (OAR 690-018-0010 to 0090) is a voluntary program under which a water right holder (district) or a water right user (individual landowner beneficially using the right) may develop a conservation project to conserve water and then apply for use of the conserved water. This policy directs how SID will address the allocation of conserved water under ORS 537.470.

### Conserved Water Application

- An application must be submitted to the Oregon Water Resources Department (WRD) to request allocation of conserved water, as required by the WRD's rules for the conserved water program. It must be accompanied by the appropriate fee and the applicant will be required to pay for costs of notice. There is a state public review process for such applications.

The district recognizes two types of applications:

- ***District Application***

When the conserved water occurs within the conveyance system, prior to a District diversion or measurement point at the farm, the conserved water is a transportation loss for which the district as holder of the water right may apply. Applications may be the result of piping, lining, change in district point of diversion, or other capital improvements or methodology which conserves water and meets the state's program requirements. The allocation of conserved water as the result of a district project and the expenditure of district funds and personnel results in a benefit to the district as a whole so long as no water user's ability to legally apply the user's beneficial allocation occurs.

- ***Water User Application***

When the conserved water occurs past the district's point of diversion to the farm, then the conserved water is a transportation loss for which the water user beneficially applying irrigation to the landowner's own property may apply. The allocation of conserved water as the result of the water user project and expenditure is a benefit to the landowner applying for the conserved water project proportionate to the amount of water at that diversion allocated to the applicant.

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In some cases the project may result from the efforts of a group or subdistrict of water users jointly carrying out a project. In that case the conserved water will be allocated based on pro-rata shares of water allocation and investment, according to a plan prepared by the water users and approved by the board.

- Process for the application for conserved water
  - Prepare the state application form according to WRD requirements and then submit the project specifications and an analysis of the water savings to the district's board for review and approval.
  - Submit the application to the WRD for its review, public notice and public review.
  - SID staff will assist water users in preparation of their proposals by
    - Providing available information regarding grants and funding sources
    - Providing copies of rules and policy and an application form
    - Providing a list of resources for potential engineering or professional assistance; or providing district services for technical project review through the use of reimbursed staff time when staff has available time to assist
    - Reviewing the application before submittal to the board at water user request

#### **Allocation of Conserved Water**

- Use of conserved water:

Oregon law authorizes water resulting from a conserved water application to be transferred for use for

  - Irrigation of additional land (applicant's land or land of others through transfer)
  - Other beneficial uses under Oregon law
  - Lease or permanent allocation to instream benefits

Transfers must conform to WRD rules as detailed in OAR Division 690, Sections 380 and 385.

- Definition of conserved water (OAR 690-018-0020):

"Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:

  - The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
  - The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.
- State allocation formula for conserved water (OAR 690-018-0012)

When the project is completed,

  - Pursuant to ORS 537.470(3), after determining the quantity of conserved water, if any, required to mitigate the effects on other water rights,
  - The Water Resources Commission shall allocate 25% of the remaining Conserved water to the state for instream purposes; and
  - Allocate 75% of the remaining water to the applicant, unless
    - the applicant proposes a higher allocation to the state; or

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- more than 25% of the funds used to finance the conservation project comes from federal or state public funds; or
  - when more than 25% of the funds are public grants not subject to repayment, the Commission will allocate a percentage equal to the public fund proportion.
  - In no case shall the applicant receive less than 25% of the remaining conserved water unless the applicant voluntarily chooses to propose a higher allocation to the state for instream purposes.
- Priority date of the conserved water is to be selected by the applicant; it can either be:
    - priority date of water right
    - or one minute after the date of the water right.
  - The applicant does not have to make the allocation determination until up to five (5) years after the conservation has been completed.
    - This allows the applicant sufficient time to determine water savings without creating injury to other water users and to make appropriate decisions.
    - During this time the conserved water can be leased instream but no out-of-stream allocations can be made until the final decision is made on the permanent outcome of the conserved water.
  - If the applicant proposes to transfer conserved water outside the boundaries of the district for any beneficial use, the applicant must provide the district an exit fee. (See district "exit policy".)

#### **Decision to Allocate Conserved Water**

After adhering to the state's rules regarding completion of a water conservation project application, the applicant [either "SID" or a "water user(s)"] of a water conservation project under ORS 537.470 will go through the following procedure:

- The application shall describe how water saved by conservation measures will be allocated.
- Submit the application to the board for its review and approval.

#### **Appeal Process**

If the board approves the proposed water conservation project, any SID water user in good standing may appeal the board's decision, under the following process.

- Form of request for appeal
  - in writing
  - within two weeks from the date of the board's decision
  - request for appeal shall include the name, address, and telephone number of the SID water user appealing the board's decision and a concise statement of the reasons the water user believes the proposed water conservation project is not in the public interest.
- Grounds for appeal
  - board shall limit its consideration to whether the proposed water conservation project complies with this policy
  - SID water user appealing the board's decision shall have an opportunity to

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- Grounds for appeal
  - board shall limit its consideration to whether the proposed water conservation project complies with this policy
  - SID water user appealing the board's decision shall have an opportunity to address the board concerning the appeal
  
- Decision by the board

The board shall make one of the following determinations:

  - grant the appeal and reject the proposed water conservation project
  - modify the proposed water conservation project as proposed by the appealing water user
  - direct the district manager to work with the applicant to modify the proposed water conservation project so as to comply with this policy
  - reject the appeal and approve the proposed water conservation project as proposed
  
- When requested
  - Provide district users an opportunity to participate in the project financially, to receive a corresponding share of the conserved water proportionate to their water allocation. Financial participation includes all projects costs: labor, capital costs, permitting, legal and districts costs and overhead.
  
- Further appeal
  - Provide the opportunity to petition for a vote at the next regular election when petitions are filed with the board with validated signatures from 15% of the district voters.

This policy does not apply to the Main Canal Piping Conservation Project already approved by the district electors on November 9, 2004, as the electors have already had an opportunity to review that decision through a public process and within the election process.

#### **Policy Review and Updates**

The board shall review and update this policy at the first regularly scheduled board meeting following every fifth anniversary of the board either adopting or reviewing and updating this policy. The board may, in its sole discretion, review and update this policy at any other board meeting. The board shall follow the process and provisions of this policy, as required by OAR 690-018-0025(2), whenever reviewing and updating this policy.

#### **Applicability**

This policy applies only to applications for allocations of conserved water filed with the Oregon Water Resources Department by the district or a water user(s) after November 5, 2004.

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**QUESTION:** Should Swalley Irrigation District (SID) pipe 5.1 miles of the main canal and develop a 1 megawatt hydropower plant at the end of the piped canal?

**SUMMARY:** Piping 5.1 miles of the main canal will save up to 16 cubic feet per second (cfs) of water. Approximately 4 cfs will be conserved and placed in the Deschutes River. The remaining cfs will be sold to a third party to finance the piping and a portion of the conserved water may be retained by SID. The estimated cost of the piping is \$6 million. This cost will be paid by the entity that purchases approximately 12 cfs. District water users will not be required to pay for the piping or the hydropower project. The hydro plant will cost approximately \$400,000 and will be financed by Small Scale Energy Loan Program (SELP) bonds. The bonds will be repaid from the revenue generated from the hydro plant which is estimated to be \$250,000 per year.

**RESULT OF A "YES" VOTE:**

"Yes" will authorize SID to proceed with the piping project and the hydropower facility.

Yes

**RESULT OF A "NO" VOTE**

No

"No" rejects the piping project and the hydropower facility.

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**Exhibit G: Land-Use Information Form/Notice**

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SALEM, OREGON**





## DESCHUTES RIVER CONSERVANCY

Date: 12.11.2007

TO: Jefferson County Planning Department  
66 SE "D" Street  
Madras, OR 97741

FROM: The Deschutes River Conservancy

SUBJECT: Proposed Instream Water Right Transfer In Your Jurisdiction

We are notifying you of our intent to transfer a water right to instream use. We will be submitting an application to the Oregon Water Resources Department changing the place of use to the Deschutes River from North Canal Dam to Lake Billy Chinook (river mile 165-120).

We propose to transfer approximately 20 cfs instream with a September 1, 1899 priority date. If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at 541.382.4077x13 or 541.728.8688.

Andy Fischer  
Conservation Project Manager  
The Deschutes River Conservancy  
andy@deschutesriver.org

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SALEM OREGON

700 NW Hill Street • Bend, Oregon 97701  
(P.O. Box 1560 • 97709)  
541.382.4077 • Fax 541.382.4078  
www.deschutesriver.org / info@deschutesriver.org



## DESCHUTES RIVER CONSERVANCY

Date: 12.11.2007

TO: Deschutes County Planning Department  
1300 NW Wall Street, Suite 200  
Bend, OR 97701

FROM: The Deschutes River Conservancy

SUBJECT: Proposed Instream Water Right Transfer In Your Jurisdiction

We are notifying you of our intent to transfer a water right to instream use. We will be submitting an application to the Oregon Water Resources Department changing the place of use to the Deschutes River from North Canal Dam to Lake Billy Chinook (river mile 165-120).

We propose to transfer approximately 20 cfs instream with a September 1, 1899 priority date. If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at 541.382.4077x13 or 541.728.8688.

Andy Fischer  
Conservation Project Manager  
The Deschutes River Conservancy  
andy@deschutesriver.org

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700 NW Hill Street • Bend, Oregon 97701  
(P.O. Box 1560 • 97709)  
541.382.4077 • Fax 541.382.4078  
www.deschutesriver.org / info@deschutesriver.org



**DESCHUTES RIVER  
CONSERVANCY**

Date: 12.11.2007

TO: City of Bend- Planning Division  
710 NW Wall St.  
Bend, OR 97701

FROM: The Deschutes River Conservancy

SUBJECT: Proposed Instream Water Right Transfer In Your Jurisdiction

We are notifying you of our intent to transfer a water right to instream use. We will be submitting an application to the Oregon Water Resources Department changing the place of use to the Deschutes River from North Canal Dam to Lake Billy Chinook (river mile 165-120).

We propose to transfer approximately 20 cfs instream with a September 1, 1899 priority date. If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at 541.382.4077x13 or 541.728.8688.

Andy Fischer  
Conservation Project Manager  
The Deschutes River Conservancy  
andy@deschutesriver.org

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SALEM, OREGON**

700 NW Hill Street • Bend, Oregon 97701  
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541.382.4077 • Fax 541.382.4078  
www.deschutesriver.org / info@deschutesriver.org



Oregon Water Resources Department
Land Use Information Form

SID Main Phase II

THIS FORM IS NOT REQUIRED IF: 1) water is to be diverted, conveyed, and/or used only on federal lands; or 2) the application is for a water-right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply: a) only the place of use is proposed for change, b) there are no structural changes, c) the use of water is for irrigation, and d) the use is located in an irrigation district or exclusive farm-use zone.

Applicant Name: Deschutes River Conservancy
Mailing Address: P.O. Box 1560
City: Bend State: OR Zip: 97709 Day Phone: 541-382-4077x13

This application is related to a Measure 37 claim. [ ] Yes [X] No

Andy

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), or used. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

POD ->

Table with 8 columns: Township, Range, Section, 1/4 1/4, Tax Lot #, Plan Designation (e.g. Rural Residential/RR-5), Water to be: (Diverted, Conveyed, Used), Proposed Land Use: (Piping)

List all counties and cities where water is proposed to be diverted, conveyed, or used. Deschutes

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B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water [ ]
Water-Right Transfer [ ]
Exchange of Water [ ]
Allocation of Conserved Water [X]
Limited Water Use License [ ]
Permit Amendment or Ground Water Registration Modification [ ]

Source of water: [ ] Reservoir/Pond [ ] Ground Water [X] Surface Water (name) Deschutes River

Estimated quantity of water needed: 18 cubic feet per second [X] gallons per minute [ ] acre-feet

Intended use of water: [ ] Irrigation [ ] Commercial [ ] Industrial [ ] Domestic for household(s)
[ ] Municipal [ ] Quasi-municipal [X] Instream [ ] Other

Briefly describe: A portion of Swalley Irrigation District's main canal will be piped, therefore conserving water that would otherwise seep into the ground.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt below and include it with the application filed with the Water Resources Department.

### For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form.

This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

**Please check the appropriate box below and provide the requested information**

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): SCA 19.22.050

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.)

**If approvals have been obtained but all appeal periods have not ended, check "Being pursued".**

Type of Land-Use Approval Needed (e.g. plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

*Land uses to be served by the proposed water uses are unknown to the City of Bend. Future users may be required to go through land use approval.*

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Name: Colin Stephens Title: Planning Manager  
 Signature: [Signature] Phone: 541-693-2119 Date: 3/7/07  
 Government Entity: City of Bend

**Note to local government representative:** Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

**Exhibit I: Agency Support Letters**

(Please note that Oregon DEQ has a standing letter of support on file.)

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# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Fish and Wildlife

Deschutes Watershed District

61374 Parrell Road

Bend, OR 97702

(541) 388-6363

FAX (541) 388-6281



December 28, 2006

Andy Fischer  
Deschutes River Conservancy  
700 NW Hill Street  
Bend, Oregon 97701

Re: Swalley Irrigation District Phase II Conserved Water Application

Dear Andy;

The Oregon Department of Fish and Wildlife (ODFW) is writing in support of the conserved water application for the Phase II piping project proposed for implementation in the Swalley Irrigation District (SID).

It is ODFW understanding that the piping project will result in piping of 3.4 miles of the SID Main Canal beginning at the point of diversion located at the North Canal Dam. The applicant and agent propose to transfer and protect 18 cfs (100%) of the conserved water instream from the point of diversion downstream to Lake Billy Chinook for the benefit of fish, wildlife, and other aquatic resources. Flows would be protected from April 1 through November 1, during the normal irrigation season. This instream transfer will result in improved habitat for redband trout, brown trout, and bull trout in the Deschutes River between Bend and Lake Billy Chinook and summer steelhead, Chinook, and redband trout in the lower Deschutes River.

Thank you for the opportunity to provide comments.

Sincerely,

Steven Marx

District Fisheries Biologist

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# Oregon

Theodore R. Kulongoski, Governor

## Parks and Recreation Department

725 Summer Street NE, Suite C

Salem, OR 97301-1266

(503) 986-0707

FAX (503) 986-0794

[www.oregonstateparks.org](http://www.oregonstateparks.org)



January 19, 2007

Andy Fischer, Program Associate  
The Deschutes River Conservancy  
P.O. Box 1560  
Bend, OR 97709-1560

RE: Phase II – Swalley Irrigation District

Dear Mr. Fisher,

Thank you for the opportunity to comment on the above proposal.

This proposal is to pipe 3.4 miles of the Main Canal, beginning at the North Canal Dam. Phase II of the entire project proposes to conserve 18.0 cfs of an 1899 water right. This conserved water will be permanently conserved instream from the North Canal Dam to Lake Billy Chinook from April 1<sup>st</sup> through November 1<sup>st</sup> of each calendar year.

The Oregon Parks and Recreation Department is supportive of this project for the purpose of the conserved water program and the resulting improved condition of the Middle Deschutes Scenic Waterway.

Sincerely,

Jan E. Houck  
Water Recreation Program Coordinator

/jeh

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