

18.02	ALT	<p>The argument for modernization is compelling... on its surface. I have deeper concerns about the piping of irrigation canals:</p> <p>1) Senior rights holders may lose incentive to conserve water. Prior to piping canals, conservation measures must be implemented, such as:</p> <ul style="list-style-type: none"> • a metered system that rewards irrigators for conservation through lower bills; • demand-based water delivery; • use of drip, sprinklers or pump-back systems. 	Thank you for your comment.
18.03	ENRG	2) Development of in-pipe hydroelectric facilities creates a disincentive to conservation by senior rights holders, as more water produces more revenue.	The proposed project does not include in-pipe hydroelectric facilities.
18.04	WAT	3) Water isn't "lost" through leaking canals, rather, it recharges groundwater aquifers. Cold springs essential to threatened species (steelhead, bull trout) could be impacted if water doesn't seep into the ground from canals.	Please see Sections 4.10.4, 6.10.2.4, and 6.10.3.4 for discussions of groundwater resources and potential affects to them.
19.01	Land Use	<p>The Draft EA is an unbalanced document. It is not credible in its assessment of the relevant facts. The Draft EA fails to pay adequate attention to the rights and interests of the landowners across whose land the easement runs. It is inexplicably dismissive of the most obvious, cheapest common sense solution to conservation of water – greater efficiency and responsibility from those who use it. It fails to consider the nature of Carey Act easements and the fact that rights of way are not equivalent to the rights of a landowner. 19th century statutes designed to assist hardscrabble settlers must not be abused as a legal cloak behind which construction crews may march uninvited on to private land within just a few feet of people's homes. For these reasons I would encourage the authors to revisit their proposals with regard to laterals running across land which they do not own. Should they fail to do so, with regret I will have no option but to consider all available legal means to protect my rights. It is disappointing that the authors of the Draft EA have been so brazen in sacrificing the values of the American West upon the altar of quick and easy private profit funded by government subsidy.</p> <p>I am disturbed by the double standards of Section 5.2.1. In considering pipeline realignment, the Draft EA notes that "new easements would disrupt prime farmland and residential living areas, and the easements would be a contentious and divisive issue within the surrounding community", and in rejecting this option cites "social effects to adjacent landowners." Yet in seeking to impose the pipeline along the existing canal route, no such negatives are discerned for the current landowners. I would also note that, as further detailed below, the current easement does not contemplate a pipeline in any case.</p> <p>Legality:</p> <p>In this country it ought to be very serious thing to interfere with a property</p>	<p>Please see TID's easement policy on their website. Please also see ORS 545.239, ORS 545.249, and ORS 545.287, which describe the rights of irrigation districts to enter upon lands with an easement for the purposes of maintenance and improvement of irrigation works. <i>Swalley Irrigation District v. Alvis</i> (2009) affirmed a district's right to pipe using its historical easement as authority. Regarding other means of water conservation, please see Sections 5.2.4, 5.2.5, and 5.2.6 of the Plan-EA for a discussion about why voluntary duty reduction, on-farm efficiency upgrades, and piping private laterals were considered but eliminated from further study. Please also refer to the response to comment 2.06; this response also applies to voluntary duty reductions and piping private laterals.</p> <p>Reference: <i>Swalley Irrigation District v. Alvis</i>. 326 Fed. App'x. 995 (9th Cir. 2009).</p>

		<p>owner's enjoyment of his or her own land; the bar for such interference must necessarily be set high. To borrow from the California Court of Appeal in <i>Felsenthal v Warring</i>:</p> <p>"We know of no principle of law or power in a court of equity to justify or authorize an invasion of the property rights of one private party to serve the convenience or necessities of another private party. Such a principle, if once adopted by judicial tribunals, upon grounds of necessity, would, in its practical operation, result in a system of judicial condemnation of the property of one citizen to answer an assumed necessity or convenience of another citizen, and the sacred right of private property, so jealously guarded by courts in all English-speaking countries, would become but a shadowy unsubstantiality."</p> <p>The easement holder does not enjoy the same latitude that the landowner does in improving the land, and the rights of the easement holder are to be construed restrictively.</p> <p>The Draft EA notes the geographical extent of its right of way under the Carey Act but fails to specify the substance of the easement. Evidently the Draft EA assumes that the easement permits TID to build and install a pipe. However, the relevant statutes provide for ditches and canals, and the right of way permits TID to maintain and repair those canals. The scope of an easement is fixed by the location, character and use in existence at the time the land became subject to the easement. Once fixed, the scope of the easement may not be changed without the consent of the servient owner - thus no right to install a pipe exists, and its installation would constitute an illegitimate creation of a new servitude upon the land. Case law clearly demonstrates that additional convenience or benefit to the dominant estate is immaterial where the alteration would result in the creation of a new servitude. In addition, the loss of existing riparian habitat would increase the burden upon the land, creating an additional bar to the proposed alteration of the easement.</p> <p>Nor is the construction of a pipe reasonably necessary to achieve the purpose of the easement – per the Draft EA, farms in the TID area could improve irrigation efficiency by almost half as much again, and any expansion of the needs served by TID subsequent to the vesting of the easement is irrelevant to the interpretation of the scope of that easement.</p> <p>Whilst the stated environmental aim of water conservation is laudable, it is not relevant to defining the scope of the easement and it may be achieved by other means.</p> <p>I am aware of the <i>Swalley Irrigation District v Alvis</i> case. I consider the court's decision in that case to have erred in both fact and law.</p>	
19.02	ALT	<p>The first, cheapest and simplest way to save water is to require individuals to be more responsible with its use. However, in 249 pages of the Draft EA the possibility of improving the irrigation efficiency of farms merits less than half a page (Section 5.2.4). This is strange given that TID estimates the current level of efficiency to be only 70%. It would seem incumbent upon</p>	<p>Please see the responses to comments 2.06 and 12.02.</p>