

**PIONEER IRRIGATION DISTRICT
PROCEDURES FOR EVALUATION OF UNAUTHORIZED ENCROACHMENTS**

**I.
INTRODUCTION**

In order to implement the decision of the Idaho Supreme Court in the case of *Pioneer Irrigation District v. City of Caldwell*, Docket No. 37242, issued on November 14, 2012, Pioneer Irrigation District (“Pioneer”) has adopted this procedure to document the process for compliance with the requirements of Idaho Code Section 42-1209, as determined by the Idaho Supreme Court, relative to Unauthorized Encroachments.

**II.
STANDARD PROCEDURE AND EXCEPTIONS**

These procedures are standard and Pioneer will strive to apply them uniformly in all circumstances where any individual or entity has caused or permitted installation or construction of any Encroachment of any nature in a Pioneer easement or right-of-way after July 1, 2004, without the written permission of Pioneer. Pioneer may also use the hearing procedures described herein to evaluate Encroachments installed in Pioneer facilities before July 1, 2004. Such hearing procedures will be used by Pioneer to determine whether such Encroachments have caused, or may cause, unreasonable interference with the use of Pioneer’s easements or rights-of-ways. Notwithstanding the references below, the provisions of Idaho Code Section 42-1209 shall not apply to hearings regarding encroachments installed in Pioneer facilities (within easements or rights-of-way) before July 1, 2004.

**III.
WRITTEN NOTICE TO ENCROACHER**

Any individual or entity which has caused or permitted installation or construction of any Encroachment of any nature in a Pioneer easement or right-of-way after July 1, 2004, without the written permission of Pioneer, is deemed to be an unlawful encroacher (“Encroacher”). If reasonably possible, Pioneer will attempt to provide any Encroacher with written notice of Pioneer’s decision regarding the action it intends to take under Idaho Code Section 42-1209 procedures, as described below.

**IV.
NOTICE OF HEARING AND HEARING PROCEDURE**

- A. When Pioneer determines that an Encroachment of any nature has been installed or constructed in a Pioneer easement or right-of-way after July 1, 2004, without the written permission of Pioneer, it will investigate the factual circumstances involving the Encroachment and determine if a hearing is necessary. If Pioneer determines a hearing is necessary, it will schedule the hearing to be conducted at a meeting of the Pioneer Board of Directors (“Board”).

If reasonably possible, unless an emergency exists, Pioneer will attempt to provide written notice of the hearing to the Encroacher which Pioneer understands caused or permitted the installation or construction of the Encroachment under consideration. If written notice is not reasonably possible, published notice will be made.

- B. Pioneer may appoint a hearing officer to control the conduct of the hearing if needed. At the hearing before the Board, the Encroacher may present information in support of its actions concerning the Unauthorized Encroachment. The hearing will be recorded with an electronic recording device to allow for preparation of a verbatim transcript. The Board may impose limits on the length or number of statements, as necessary, to provide for the orderly conduct of the hearing.
- C. The Board will consider any other relevant information available to it when it considers the Unauthorized Encroachment. The Board may defer making a decision until a subsequent hearing in order to conduct further investigations or obtain professional input from Pioneer's consultants, but said deferral decision shall be determined and announced at the hearing where it is made.
- D. The Board shall decide if the Encroachment under consideration complies with the requirements of Idaho Code Section 42-1209 at a hearing for that purpose. In every case, the Board shall issue a written set of factual findings and a reasoned decision which shall be in the form of a motion recorded in the official minutes of Pioneer. An Encroacher who attends the hearing, or whose address is known by Pioneer, shall be provided with a copy of the minutes which document the Board's decision.
- E. The Board intends to fairly and objectively evaluate each Unauthorized Encroachment to determine if it complies with the requirements of Idaho Code Section 42-1209. In its evaluation, the Board will determine if the Encroachment complies with Pioneer's specifications and standards. This determination will be a primary consideration in Pioneer's decision of whether the Encroachment unreasonably or materially interferes with the use and enjoyment of the Pioneer easement or right-of-way. Because of the unique circumstances of each Pioneer facility and the easements or rights-of-way, some decisions may differ because of Pioneer's liability risks, statutory duties, the size of a ditch or canal, the geology of the site under consideration, the surrounding land uses or properties, the water delivery requirements of downstream property owners, access needs, maintenance procedures, or operational limitations of the Pioneer facilities or interconnected facilities which may be impacted by the encroachment under consideration. Also, Pioneer may take into account the impact of the Encroachment or Encroachments upon the entire water delivery system operated by Pioneer. Any of these considerations may be applied in Pioneer's evaluation of the Unauthorized Encroachment, but they are not the exclusive considerations which Pioneer may evaluate in its decision process.

- F. If the Board determines that the Encroachment under consideration unreasonably or materially interferes with the use and enjoyment of Pioneer easements or rights-of-way, the Board shall proceed as follows:
- (1) Remove the Encroachment at Pioneer's expense as long as removal can be accomplished within the easement or right-of-way and with no breach of peace; or
 - (2) The Encroacher may be requested by Pioneer to remove the Encroachment at the Encroacher's expense. If the Encroacher refuses or fails to remove the Encroachment:
 - (i) within thirty (30) days of Pioneer's request, during the period of November 1 to March 31; or
 - (ii) within two (2) days of Pioneer's request, during the period of April 1 to November 1,

Pioneer can remove the encroachment as provided in Section F(1) above, and subsequently seek recovery of the expenses of removal in Court at its discretion.