

PIONEER IRRIGATION DISTRICT PROCEDURES FOR EVALUATION OF PROPOSED 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.

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 requests Pioneer's written permission to install or construct an Encroachment of any nature in a Pioneer easement or right-of-way. However, if the Encroachment solely involves a project to enclose an open Pioneer ditch or canal in a pipe, or change the location of that ditch or canal, these procedures with the exception of sections III and IV below, do not apply and the procedures and standards of Idaho Code Section 42-1207 shall govern. Additionally, if a project involves a utility Encroachment, the application may be approved by Pioneer's Superintendent. If the application is denied by the Superintendent, Pioneer's Board of Directors will conduct a hearing on the application as provided herein. These procedures do not apply to any Encroachment involving a governmental entity which is a party to a cooperative agreement with Pioneer for evaluation of such encroachments. In such cases, the provisions of the effective cooperative agreement shall govern.

III. WRITTEN NOTICE TO APPLICANT

Any party applying ("Applicant") to obtain Pioneer's written permission to install or construct a proposed encroachment in a Pioneer easement or right-of-way shall be provided with Written Notice in the form of a copy of this procedure.

IV. APPLICATION FOR ENCROACHMENT

General Applications:

Any Applicant shall submit a completed written Land Use Change/Encroachment Application ("Application") to Pioneer in the form of Exhibit A, hereto, along with application fees for general applications as noted below, which is intended to cover up to the first \$1,000.00 in engineering review fees, up to the first \$1,000.00 in legal fees associated with preparing agreements, and a \$300.00 nonrefundable administrative fee:

\$2,300.00 for general applications

If there are engineering fees and legal fees that are unused at the conclusion of the project, those will be returned to the applicant. Conversely, if the project engineering review fees and/or agreement preparation fees exceed the initial \$1,000.00 set aside for each, the applicant must remit the additional fees prior to Pioneer executing any agreements. Pioneer will do its best to keep the project fee totals to \$2,300.00 or less, but fee totals can vary depending upon the project complexity and/or construction delays.

Utility Applications:

Any Applicant for a utility crossing shall submit a completed written Land Use Change/Encroachment Application ("Application") to Pioneer in the form of Exhibit A, hereto, along with a non-refundable application fee of \$200.00 for each project applied for.

If there are engineering fees, administration fees and/or legal fees that are incurred during the project Pioneer will invoice the applicant when they incur the expense. The applicant must remit the additional fees prior to Pioneer executing any agreements. Pioneer will do its best to keep the project fees low, but fee totals can vary depending upon the project complexity and/or construction delays.

As noted in Section II, above, utility Encroachment applications may be approved by Pioneer's Superintendent. Should the Superintendent deny a utility application, the applicant is entitled to a hearing before the Pioneer Board of Directors on the matter. Utility Encroachments potentially eligible for Superintendent review and approval include, but are not necessarily limited to, gas lines, telecommunication lines, fiber optic lines, potable water, sewer, cable television, and electrical lines. The utility license agreement process may also be used to review and approve minor appurtenances associated with utilities, such as power poles (replacement poles only), light poles, traffic signs, traffic signals, utility markers, bollards, guy wires, and guard rails. All utility proposals/applications are subject to review and approval on a case-by-case basis, and may be subject to denial where the Superintendent and/or the Board of Directors determine that denial is warranted under the circumstances. All minor utility appurtenances must be designed and constructed/installed in such a manner that they are either removable or securable in order to accommodate Pioneer operation and maintenance activities.

Temporary Irrigation Pipe Crossing Applications:

Any Applicant for a temporary irrigation pipe crossing shall submit a completed written Land Use Change/Encroachment Application ("Application") to Pioneer in the form of Exhibit A, hereto, along with a non-refundable application fee of \$100.00 for each irrigation pipe crossing applied for.

If there are engineering fees and/or legal fees that are incurred during the project Pioneer will invoice the applicant when they incur the expense. The applicant must remit the additional fees prior to Pioneer executing any agreements. Pioneer will do its best to keep the project fees low, but fee totals can vary depending upon the project complexity.

The Application must be physically received by Pioneer by the 15th day of any month to be considered by the Pioneer Board of Directors ("Board") at its regular monthly meeting during the following month. If the Application is not complete, as determined by Pioneer, the Applicant will be notified and requested to provide the omitted information prior to Pioneer scheduling the Application for consideration by the Board at a monthly meeting.

V. NOTICE OF HEARING AND HEARING PROCEDURE

- A. Any Applicant who has submitted an Application to Pioneer in compliance with the procedures herein, shall be mailed a written notice of a hearing before the Board, at which the Application will be considered for approval. Pioneer may appoint a hearing officer to control the conduct of the hearing if needed. At the hearing, the Applicant may present information to support approval of the Application. The Applicant is not required, but is encouraged, to attend the hearing and support the Application. The hearing will be recorded with an electronic recording device to allow for preparation of a verbatim transcript. The Board may limit the length or number of statements provided in support of the Application as necessary to provide for the orderly conduct of the hearing.
- B. The Board will consider any other relevant information available to it when it considers an Application. The Board may defer making a decision on an Application until a subsequent hearing in order to conduct further investigations or obtain professional input from Pioneer's consultants, but written notice of said deferral shall be provided to the Applicant if the Applicant does not attend the initial hearing where the deferral decision is made.
- C. The Board shall decide if an Application is approved or disapproved at a hearing for that purpose, but 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 Applicant shall be provided with a copy of the minutes which document the Board's decision on the Application.
- D. If the Board decides to approve an Application, such approval may contain conditions and requirements which must be satisfied by the Applicant, including the requirement that a written recordable agreement must be executed and recorded before any Encroachment is installed. Pioneer deems these conditions and requirements to constitute essential protections to ensure that the Encroachment will not unreasonably or materially interfere with Pioneer's use

and enjoyment of its easements or rights-of-way. Failure to satisfy any such conditions or requirements shall void the approval of the Application, and Pioneer may remove any Encroachment installed or constructed in violation of such conditions or requirements of approval.

- E. The Board intends to fairly and objectively evaluate each Proposed Encroachment to determine if it complies with the requirements of Idaho Code Section 42-1209. In its evaluation, the Board will determine if the Proposed Encroachment complies with Pioneer's specifications and standards. This determination will be a primary consideration in Pioneer's decision of whether the Proposed 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 Proposed Encroachment, but they are not the exclusive considerations which Pioneer may evaluate in its decision process.