

HERMISTON IRRIGATION DISTRICT

2006 RESOLUTION of ENCROACHMENTS

A Resolution Regarding Encroachments on District and Bureau of Reclamation Easements

FINDINGS:

A. The Hermiston Irrigation District ("District") delivers water to District water users pursuant to a system of canals, ditches and laterals that make up the District's water delivery system.

B. The District and/or the United States Department of Interior, Bureau of Reclamation (Reclamation) own easements to allow for the delivery of irrigation water by means of the District's water delivery system. An underlying landowner cannot unreasonably interfere with the rights of the District and Reclamation in these easements. The District must have access and an open way for the inspection, operation, management, repair and improvements of the District's water delivery system in order to fulfill its statutory obligations as contained in Oregon Revised Statutes ("ORS") chapter 545 and the requirements contained in its contract with Reclamation.

C. Encroachments into the easements pursuant to which the District delivers water make it difficult for the District to carry out its water delivery responsibilities. Encroachments, whether in the form of temporary or permanent physical obstructions into the easement or otherwise, increase the amount of time it takes District employees to inspect, operate, manage, repair and improve the District's water delivery system. Encroachments also increase potential liability to the District as well as the District's overall operating costs in the way of extra employee time and the costs and expenses associated with extra travel required to drive around obstructions (e.g., an unauthorized locked gate on a ditch access road can result in a District employee having to backtrack on the access road and circle around from the other direction).

D. The District Board of Directors ("Board") has the authority to establish equitable bylaws, rules and regulations for the administration of the District and for the distribution and use of water among the landowners and to generally perform all acts necessary to fully carry out the purposes of the Irrigation District Law. ORS 545.221(1)(c), (d).

E. The Board, by resolution, has authority to impose a charge on all persons receiving District-delivered water to help defray the expenses to care for, inspect, operate, manage, repair and improve the District's water delivery system. ORS 545.471(1). Moreover, in establishing its charges the Board may consider the imposition of additional charges for special services which require proportionately greater maintenance and operation and may also consider other factors the Board considers reasonable and appropriate. ORS 545.471(2).

F. Finally, the Board may pass on charges against individual water users when the District incurs charges, fees, fines or similar expenses for extraordinary services that are incurred by reason of some action or failure to act by the water user. ORS 545.471(3). The Board finds that the most efficient method to help defray the additional cost and expense related to encroachments on the easements pursuant to which the District delivers water is to establish a policy imposing graduated and minimum charges for various degrees of encroachments, pursuant to ORS 545.471 and other applicable statutes.

NOW THEREFORE, be it resolved by the Hermiston Irrigation District Board of Directors as follows:

1. Policy

Any encroachment on a District and/or Reclamation easement as described in the Findings above is a violation under this Resolution ("Violation"). The goals of enforcing this Resolution are to (a) ensure that the easements pursuant to which the District delivers water are clear from encroachments in order to allow access and an open way for the District to inspect, operate, manage, repair and improve its water delivery system; (b) encourage water users to remove existing encroachments and deter future encroachments; and (c) allow the District to assess and collect charges based on the class of Violation in order to defray the District's additional costs associated with encroachments.

2. Warning Letters

The landowner responsible for an encroachment on an easement pursuant to which District water was deliverer or was deliverable ("Violator") may be notified in writing

by the District of a potential Violation ("Warning Letter"). A Warning Letter may contain an opportunity to correct the noncompliance as a means of avoiding a charge. The Warning Letter will identify the alleged Violation, the corrective action necessary to comply with this Resolution and the deadline for performing the corrective action in order to avoid Charges, as defined below.

3. Notification of Violation

If the Violator fails to perform the corrective action within the time required by the Warning Letter, the Violator will be notified in writing by the District of the encroachment constituting a Violation ("Notification of Violation"). The Notification of Violation will state the class of Violation, the charge associated with the Violation, the corrective action necessary to comply with this Resolution and the deadline for performing the corrective action before additional Charges, as defined below, will accrue.

4. Class of Violations

(a) Class I: A Class I Violation shall include minor obstructions, including but not limited to, fences, fenceposts, hay bales, woodpiles and debris, trash or burn piles that encroach on the easement but do not unduly preclude District vehicles from accessing the water delivery system. Class I violations allow for limited unrestricted access to the water works with a vehicle but do not allow for the full area of the easement to be used for District purposes.

(b) Class II: A Class II Violation shall include moderate obstructions, including but not limited to fences, fenceposts, hay bales, woodpiles and debris, trash or burn piles that encroach on the easement and unduly preclude District vehicles from accessing the water delivery system. Class II violations include the restriction of vehicle access as a result of the encroachment (e.g., fences; locked, unauthorized or inadequate gates; debris or other objects that create a restriction). Class II Violations also include Class I Violations where the Violator has failed to perform the requisite corrective actions in the time required.

(c) Class III: A Class III Violation shall include severe obstructions, including but not limited to, unauthorized locked gates and any other structure encroaching on the easement and making it impossible for District vehicles to access the water delivery system. An unauthorized locked gate is a gate that is unauthorized by the District or may be authorized but does not have a district supplied lock thereby restricting access. Even though the easement may be accessible by vehicle, a fence or other obstruction on the edge of the water works that prevents access to or from the rest of the easement

is a Class III Violation. Class III Violations also include Class II Violations where the Violator has failed to perform the requisite corrective actions in the time required.

5. Determination of Encroachment Charges

(a) Administrative Base Charge: Regardless of the class of Violation, all persons found in violation of this Resolution shall be assessed a non-reversible Administrative Base Charge of \$150.00 in addition to the Class of Violation Charge as set forth below.

(b) Class of Violation Charge:

(i) Class I: A Class I Violation incurs a charge of \$100.00.

(ii) Class II: A Class II Violation incurs a charge of \$350.00.

(iii) Class III: A Class III Violation incurs a charge of \$750.00.

(c) All administrative and violation charges for 2007 and beyond will be as set by the District fee schedule adopted by the Board annually.

6. Payment of Penalty and Appeals

The District will send the Violator a Notification of Violation. The Violator shall pay the Administrative Base Charge and Class of Violation Charge ("Charges") within 60 days of receiving the Notification of the Violation. Payment shall be sent to the District office. Additional Charges may be assessed if the Violator fails to perform the corrective actions specified in the Notification of Violation by the deadline specified in the Notification of Violation.

Any appeal of any Violation Charge may be made by petitioning the Board in writing within 30 days of receiving the Notification of the Violation. The deadline for corrective action will not be changed as a result of an appeal of Violation Charges. Administrative and Violation Charges will continue to be charged annually as long as violations exist.

If any incurred charges remain unpaid beyond the due date of the incurred charges, the secretary of the district may file a notice of claim of lien with the recording officer of the county in which land is situated. If a notice of claim of lien has been filed under ORS 545.494, the costs of filing and any cost of removing the lien, including but not limited to recording and filing fees, title search fees and a reasonable administrative fee, shall be charged and collected. ORS 545.496(1), (3).

7. Miscellaneous

Nothing in this Resolution shall (a) create a license for encroachment, or (b) impair or affect any valid water right. Regardless of whether the District takes action under this Resolution, the District and/or Reclamation may pursue whatever other remedies they may have with respect to encroachments on easements pursuant to which the District delivers water, including the institution and maintenance of all actions and proceedings, suits at law or in equity, necessary or proper in order to enforce, maintain, protect and preserve the easements pursuant to which the District delivers water, as authorized in ORS 545.225(1)(b), (2). Whether the District pursues Charges under this Resolution is purely in the District's discretion, and the failure to pursue Charges for a particular Violation does not set any precedent for future Violations or Violations by others. In the event that a Violator is not a District water user but is otherwise eligible to receive irrigation water from the District by means of a valid water right transfer or otherwise, the Violator will be required to pay all Charges that are due and owing before receiving any irrigation water. Administrative fees and Violation Charges do not prevent additional charges if District personnel have to remove encroachments for the purpose of operation and maintenance.

IT IS THEREFORE RESOLVED that the Board of Directors agrees to and authorizes this resolution:

This Resolution adopted by the Board of Directors on September 14, 2006.

Len Jeppeson, Director Division 1

John Lybrand, Director Division 4

Mike Bergstrom, Director Division 2

Charles Miller, Director Division 5

Craig Coleman, Director Division 3