

Pathfinder Irrigation District Policy Outline

Policy On Right-of-Way Encroachments

I. District's Authority.

A. The Reclamation Act contained in 43 USC § 945 provides that all patents issued after August 30, 1890, shall expressly contain a reservation from the lands described in the patent, “a right-of-way thereon for ditches or canals constructed by the authority of the United States.”

B. The Reclamation Act, 43 USC § 945, grants the Pathfinder Irrigation District a right-of-way through these reservations.

C. 43 USC § 946 also provides the area of the right-of-way, “to the extent of the ground occupied by the water of any reservoir and of any canals and laterals, and fifty feet on each side of the marginal limits thereof.”

D. The District may have additional or different ownership, right-of-way, or easement interests by adverse possession, acquiescence and recognition, grant or condemnation.

E. Neither State law (§ 25-202 of the Revised Statutes of Nebraska) nor Federal law permits adverse possession against the District, or the United States which retains an interest in the canals and laterals.

II. Structural Encroachment.

- A. No future encroachment within the right-of-way.
- B. The District will not be responsible for damages to structures located within the right-of-way that result during the normal operation and maintenance of District facilities and rights-of-way.
- C. If an existing structure is replaced, it must not encroach on the right-of-way.

III. Trees.

- A. Existing trees located within the right-of-way, that interfere with the District's operation and maintenance, will be removed by the District.
- B. The District will not be responsible for damages to trees located within the right-of-way as a result of District operation and maintenance.
- C. Planting of new trees within the 50-foot right-of-way will not be allowed. If new trees are planted within the right-of-way, the District will not be responsible for damages resulting from District operation and maintenance and the landowner may be charged with the cost of their removal.

IV. Irrigation structures and facilities. (e.g.: cement ditch, gated pipe, reuse pits, center-pivot pits, etc.)

- A. The District will not be responsible for damages to private irrigation facilities and structures located within the District right-of-way.

B. New permanent or non-moveable structures must be located off of the right-of-way.

V. Other personal property. (E.g.: equipment, vehicles, materials, etc.)

A. All personal property as described above should **not** be placed or stored within the right-of-way.

B. The District will not be responsible for damages to personal property located or stored within the right-of-way.

VI. Fences.

A. New fences must be located outside of the right-of-way.

B. The District will not be responsible for damages to existing fences located within the right-of-way.

C. Cross-fences must span the waterway and not impede the flow of water.

D. Gates which block the right-of-way access road or which require opening or closing will not be permitted.

E. Autogates are permitted:

i) The standard autogate width will be 12'.

ii) If a landowner desires the District to install an autogate wider than the 12' standard width, the landowner will be responsible for the additional costs.

iii) The District will install autogates, at its expense, at locations where existing fences cross the right-of-way. Once installed the landowner will be responsible for cleaning and maintaining the autogate.

iv) The landowner will be required to install an autogate, at his expense, when a new fence is constructed that crosses the right-of-way after the adoption of this policy. The autogate must meet District specifications.

v) The landowner may place a cable across the autogate during the October 1 to March 31 period, but must be removed by March 31. If the cable is to be locked, a District lock must be connected to the landowner's to allow District access during this time period.

vi) A minimum 16-foot access gate must be placed by (the District/landowner) beside the autogate for access for heavy equipment around the autogate.

vii) If landowner is concerned that the autogate will create a problem for his livestock, the landowner at his expense can install an automatic gate that will provide access without requiring District staff to open a gate or barrier.

viii) If the landowner refuses to comply with the installation of an autogate or to provide an automatic gate, he will **not** be allowed to fence-in the District right-of-way.

ix) Landowner will indemnify and hold the District harmless from any injury to person or property resulting from landowner's failure to clean and maintain autogates.

F. Non-roadside Gates: Landowner must install a minimum 16-foot gate to allow for District access. Gate must be located as near to ditch as possible for access.

G. If the landowner wishes to graze areas on both sides of the ditch, he can do so provided no significant damage occurs to the ditch, structures and access roads. If significant damage does occur, the landowner will be responsible for paying for the damages and be required to fence-out the right-of-way in the future.

VII. Temporary fences (e.g. electric fences).

A. Temporary fences can only be used during the non-irrigation season (October 1 through March 31) and must be removed from the right-of-way by March 31.

B. Access gates must be provided at any locations where the fencing crosses the right-of-way (both sides of ditch).

C. Gates must be equipped with insulated gate openers and reflectors.

D. If the landowner wishes to graze areas on both sides of the ditch, he can do so provided no significant damage occurs to the ditch, structures and access roads. If significant damage does occur, the landowner will be responsible for paying for the damages and be required to fence-out the right of way in the future.

E. Landowners who do not comply with fencing policy will not be allowed to fence-in and graze the right-of-way.

VIII. Procedure for notifying landowner of encroachment or right-of-way issue.

A. Personal contact with landowner by management or division supervisor to discuss problem.

B. Follow-up letter sent to the landowner outlining the issues discussed, means of resolving and schedule agreed to for remedying the problem.

C. If no resolution can be reached or if the time schedule expires for resolution of the problem, a letter will be sent to the landowner informing him of the District's concerns and actions to be taken by the District to remove the encroachment.

D. If the right-of-way problem is not resolved; the Board of Directors may initiate legal action to remedy the problem.

IX. Additional requirements.

A. Any landowner who has any question concerning the placement of any personal property, attachment or structure across, in or upon the District

right-of-way should consult with the District office at 140624 10th, P.O. Box 338, Mitchell, NE 69357, telephone number (308) 623-1022, before placement to avoid the inconvenience and expense of removing it.

B. The landowner will be responsible for all damage or injury to District property or personnel caused by landowner's maintenance of any obstructions or encroachments on the District's right-of-way. Additionally, landowner may be required to pay for the District's cost of removing any structures, obstructions or other encroachments on the District's right-of-way.

Policy is subject to changes and additions at the discretion of the Board of Directors.