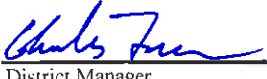
	KENNEWICK IRRIGATION DISTRICT PROCEDURE 4.2A							
	Encroachments on KID Rights-of-Way or Easements							
APPROVED:  District Manager	Effective Date: January 5, 2010				Revision: 0			
Date: Jan. 5, 2010	Annual Review performed by:	Initial	Initial	Initial	Initial	Initial	Initial	Initial
	Review date:							

PROCEDURE:

1. Permit Application Process:
 - 1.1. The applicant must submit an encroachment permit application to the Engineering Department.
 - 1.2. The permit is checked for completeness by the Engineering Department.
 - 1.3. The Engineering Department will route the permit to the Operations and Planning departments for comments.
 - 1.4. The permit and any comments are then routed to the Engineering Manager for approval or denial.
 - 1.4.1. If approved:
 - 1.4.1.1. Engineering Department prepares the encroachment permit for signature and recording.
 - 1.4.1.2. Applicant pays recording and inspection fees.
 - 1.4.1.3. Engineering Department must be notified 48-hours in advance of any type of construction.
 - 1.4.1.4. Applicant completes construction and provides KID with an as-built map of the construction.
 - 1.4.1.5. Engineering Department updates GIS and base map.
 - 1.4.2. If denied:
 - 1.4.2.1. Engineering Department returns the denied application to the applicant with an explanation of why it is being denied.
 - 1.4.2.2. Engineering Department retains a copy of the denied application for the District files.
2. Appeal Process
 - 2.1. Upon receipt of a written decision to deny an application, the applicant may file a written appeal to the District Manager within ten working days. This appeal must include justification of why the denial should be reversed.
 - 2.1.1. If the appeal is not received within ten working days, then no appeal will be considered.
 - 2.1.2. Reasons an appeal may be approved:
 - 2.1.2.1. An error in interpreting the law.
 - 2.1.2.2. A decision that is clearly erroneous.
 - 2.1.2.3. The proposed encroachment would not create a safety hazard.

- 2.1.2.4. The proposed encroachment would not obstruct maintenance of irrigation systems or canals or otherwise increase the cost to maintain those facilities.
 - 2.1.3. The District Manager will review the application and make a decision based on the criteria mentioned in this section. All determinations shall be in writing.
 - 2.1.3.1. If approved (see section 1.4.1.)
 - 2.1.3.2. All denials are final.
3. Forms:
 - 3.1. The permit application form “Application for Consent to Cross or Encroach upon District Property Right-of-Way” is available at the KID business office reception desk.
 - 3.2. The permit application must be completed in full. Do not leave any blanks unfilled and a drawing of the proposed encroachment must also be included.
 - 3.3. The permit application must be signed and dated by the applicant on the front page and initialed and dated on page two to insure they understand the conditions and terms of the permit.
 - 3.4. The completed permit application must be returned to the KID allowing a minimum of ten business days for processing.
4. Terms and Definitions:
 - 4.1. Easement: An easement is a non-possessory interest in real property. An easement is the right to use or control property, and/or an area above or below it, for a specific limited purpose. The recipient of a grant of easement is typically referred to as a grantee. Easements are usually, but not always, appurtenant to the land benefited rather than being the personal property of an individual.
 - 4.2. Right-of-Way: A right-of-way is the right to pass through property owned by another. A right-of-way may be held as fee title or may be in the nature of an easement.
 - 4.3. Encroachment: Any interference with or intrusion into another’s property. Anything or conduct that creates an interference with an easement or right-of-way. Encroachments may include, without limitation, buildings, plants, trees, fences, landscaping, pools, irrigation systems, utility poles, or any other structure or thing that creates an interference of any degree with the use, maintenance or operation of a KID facility.
 - 4.4. Interference: The act or process of interfering, something that interferes, obstruction, to interpose in a manner that hinders or impedes the reasonably convenient use of an easement or right of way.
 - 4.5. Permits: Permits are generally considered a form, or subset, of licenses. A permit does not convey a possessory interest in real property, but grants only permission to use real property under specific, limited conditions. A license is a permission, usually revocable, to commit some act that would otherwise be unlawful; an agreement that it is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal, such as hunting game. A license is an authority to do a particular act, or series of acts, upon another's land, without

possessing any estate therein. Licenses, including permits, do not convey any ownership interest in the land and are not generally considered to be appurtenant to a parcel of land. In the Bureau of Reclamation, the term “permit” is generally used to refer to short-term (less than three years) and less intense uses and “license” generally is used to refer to longer term and more substantial uses. The recipient of a permit/license is typically referred to as a permittee/licensee or as a grantee.

4.6. Ownership: The state, relation, or fact of being an owner; to have or hold as property.

5. References:

5.1. Code of Federal Regulations (CFR), Title 43, Public Lands: Interior; Part 429, “Procedure to Process and Recover the Value of Rights-of-use and Administrative Costs Incurred in Permitting Such Use,” subsection 429.3, “Establishment of the Value of Rights-of-Use,” paragraph (b).

5.2. USBR Contract No. 7-07-10-L0056, “Crossing of Irrigation Facilities”

5.3. Land Management and Development Program (LND) 08-01, Reclamation Manual; Directives and Standards

5.4. Revised Code of Washington (RCW) 79.110.300, “Right-of-Way for Irrigation, Diking, and Drainage Purposes”

5.5. General Records Retention Schedule for All Local Government Agencies in Washington State

5.6. Contract between United States of America and the Kennewick Irrigation District, dated October 11, 1930, as amended

6. Retention:

6.1. Database on file at KID

6.2. Land Use History Files (Irrigation Utilities) – Essential Record (Requires Security Backup) – Contact Regional Archivist before Disposal.