

BLACK CANYON IRRIGATION DISTRICT RESOLUTION NO. 2023-05: FACILITY MODIFICATION AND ENCROACHMENT FEE REQUIREMENTS

WHEREAS, the District, pursuant to Idaho Code Section 43-304, enjoys broad authority to do any and every lawful act necessary to be done to facilitate, perpetuate, and ensure that sufficient water is delivered to lands and landowners in the district for irrigation purposes;

WHEREAS, the District is experiencing increased urbanization and residential development encroaching upon District water delivery and drainage facility easements and rights-of-way, which development oftentimes threatens the integrity and function of the District's irrigation and drainage facilities, including making the same more difficult to operate, maintain, repair and replace;

WHEREAS, the District is authorized to review and reasonably condition encroaching land uses through the written permission requirements of Idaho Code Sections 42-1102, 42-1207, and 42-1209, among others, because of the legal duties the District owes under Idaho Code Section 42-1201, 42-1202, 42-1203, and 42-1204;

WHEREAS, Idaho law provides that those seeking to modify or encroach upon District facilities (or facility easements/rights-of-way) are obligated to pay the reasonable engineering and legal review and drafting costs incurred by the District in observance of the prior written permission requirements of Idaho Code Sections 42-1102, 42-1207, and 42-1209; and

WHEREAS, the District wishes to further centralize, formalize, and codify its facility modification and encroachment review fee policies developed over time as discussed in the official meeting minutes of its Board of Directors;

NOW, THEREFORE, BE IT RESOLVED, that the District further confirms and ratifies the following facility modification and encroachment review fee policies and requirements for use throughout its boundaries:

All landowners proposing to relocate and/or pipe District facilities, or proposing to encroach upon District facility easements and rights-of-way, shall submit written application on forms approved by the District and submit payment of an application fee upon submission of the application intended to cover the District's expenses incurred (including without limitation administrative, engineering, mapping, recording and legal) reviewing and approving the proposed facility modification or encroachment (including the drafting of a license agreement as needed). Should the application fee initially submitted fail to cover all District expenses incurred, the District shall recoup all remaining expenses from the landowner applicant, except for all intake fees, which are non-refundable. Should the application fee exceed the District expenses incurred, the District shall refund the unspent remainder back to the landowner applicant. In all instances, the District shall provide the landowner applicant with an accounting of the District's expenses incurred in response to the application upon request.