

RECLAMATION DISTRICT NO. 1601 RULES AND REGULATIONS

The following Rules and Regulations to control alterations to and encroachments on, through or over the District's levee and drainage systems were adopted by the Board of Trustees of Reclamation District 1601 (the "Board") on May 18, 2010, and replace in their entirety all prior rules and regulations on this subject.

SECTION I. Purpose. The purpose of these Rules and Regulations is to protect landowners, residents and members of the general public from the adverse effects of drainage, floods or the threat of floods caused by improper alterations to or encroachments upon District levees and drainage systems and to assure adequate access for routine and emergency inspection, maintenance and repair.

Reclamation District 1601 (the "District") is charged by law (California Water Code sections 8200 et seq., and sections 50000 et seq.) with the responsibility of maintaining the levees which border Twitchell Island on all sides for purposes of flood control.

The District was formed on January 12, 1914, by landowners within the District for the specific purpose of the "maintenance, protection, and repair of the reclamation works in, upon, or appurtenant to said lands."

In addition to this authority granted in the formation documents, the California Water Code provides as follows:

Section 50652. The board shall exercise general supervision and complete control over the construction, maintenance and operation of the reclamation works, and generally over the affairs of the district.

Section 50013. "Reclamation works" means such public works and equipment as are necessary for the unwatering, watering, or irrigation of district lands and other district operations.

Section 50900. A district may do all things necessary or convenient for accomplishing the purposes for which it was formed.

Therefore, the District has statutory authority to oversee the construction, management, operation, and use of all the reclamation works within the boundaries of the District.

The District possesses additional rights with respect to the levees surrounding the District, which includes, but is not limited to the following: (a) the District holds an implied easement on the levees by way of common law public dedication (*see, e.g., Hare v. Craig* (1929) 206 Cal. 753; *Union Transportation Co. v. County of Sacramento* (1954) 42 Cal. 2d 235; *Gion v. City of Santa Cruz* (1970) 2 Cal. 3d 29; *Washington Boulevard Beach Co. v. City of Los Angeles* (1940) 38 Cal. App. 2d 135; *Bess v. County of Humboldt* (1992) 3 Cal. App. 4th 1544); (b) the District

holds an implied easement on levees by way of statutory public dedication pursuant to California Civil Code section 1009(d); and (c) the District holds an equitable easement on the levees given its obligation to prevent flooding (*see, e.g., Miller v. Johnston* (1969) 270 Cal. App. 2d 289).

Consistent with the District's easement rights, the District may enjoin any and all acts which damage its levee system. (*see, e.g., Reclamation Dist. No. 1500 v. Sutter Basin Corp.* (1953) 121 Cal.App.2d 537, 263 P.2d 348).

Accordingly, these Rules and Regulations provide control for encroachment on or near the District's reclamation works in order to aid the District in carrying out the responsibilities of the District.

The Rules and Regulations are designed primarily to ensure the integrity of the reclamation works, and adequate access for routine and emergency inspection, maintenance and repair.

Therefore, these Rules and Regulations are to be used as a guide to determine what encroachments and uses will not be permitted, and what encroachments and uses may be permitted by issuance of a permit, on and near, reclamation works.

SECTION II. Definitions. As used in these Rules and Regulations, the following words and phrases shall, unless otherwise provided, have the following definitions:

(a) "Boat": Any vessel for transport by water regardless of size, use, construction, or method of propulsion.

(b) "Building": Any structure that includes, but is not limited to homes, eaves, overhangs, fixed decks and any other permanent part of a building.

(c) "Camp": To establish or pitch or attempt to establish or pitch a camp, tent, or temporary shelter or to reside temporarily or otherwise in any camp, tent or temporary shelter.

(d) "District": Reclamation District No. 1601, Twitchell Island

(e) "Ditch": Includes any artificial or manmade linear depression in the ground that carries, can carry, or is intended to carry water or runoff from one location to another.

(f) "Levee": Includes both Project and Non-Project levees as defined below.

(g) "Livestock": Any horses, cattle, sheep, goats, pigs, or other useful animal or animals, excepting household pets, of a type kept or raised on a farm or ranch.

(h) "Non-Project Levee": Any embankment or structure adjacent to Sevenmile Slough or the San Joaquin River designed or used to protect land from flooding which was constructed by the District or its predecessors or which is maintained, operated or controlled by the District or which is subject to the maintenance, operation, or control of the District. A Non-Project Levee includes all that area within and bounded by a line parallel to and lying fifty feet (50') outside the waterside toe of said embankment now located along the outer boundaries of the District and a line parallel to and

lying one hundred and forty feet (140') inside the landside toe of said embankment now located along the outer boundaries of the District.

(i) "Obstructive vegetation": Any trees, shrubbery, bamboo, briars, or other vegetation which is or could be a hindrance to access or to visual inspection excluding low grasses and lawns.

(j) "Owner": The legal owner, equitable owner, or any person harboring or having custody and control of livestock or an other item of personal or real property.

(k) "Person": Any person, persons, company, partnership, corporation, governmental body, public agency, or any agent thereof.

(l) "Project Levee": Any embankment or structure adjacent to Threemile Sough and designed or used to protect land from flooding which was constructed by the District or its predecessors or which is maintained, operated or controlled by the District or which is subject to the maintenance, operation, or control of the District. A Project Levee includes all that area within and bounded by a line parallel to and lying fifty feet (50') outside the waterside toe of said embankment now located along the outer boundaries of the District and a line parallel to and lying one hundred forty feet (140') inside the landside toe of said embankment now located along the outer boundaries of the District.

(m) "Reclamation works": means such public works and equipment as are necessary for the unwatering, watering, or irrigation of District lands and other District operations. Reclamation works shall include, but not be limited to, all levees and ditches as defined above.

SECTION III. Encroachments. No person shall, and it shall be unlawful for any person to, do any of the following in or along any reclamation work (all of which are deemed to be encroachments), without first obtaining an Encroachment Permit in accordance with these Rules and Regulations:

- (a) grade, level, fill, widen, raise, cut, drill, bore, penetrate, disturb, rip or dig upon; or
- (b) place, erect, construct, or maintain any pipeline, pole, pole line, cable, gate, fence, barrier, barricade, conduit, rail, dock, ramp, wharf, landing, building, structure, obstructive vegetation, or works of any kind upon or over; or
- (c) leave, place, store, or maintain any lumber, pipe, or any other object or item upon; or
- (d) drive, park or operate any vehicle or equipment of any kind over 80,000 lbs. gross weight other than official emergency vehicles upon or over; or
- (e) leave, place, maintain, ride, drive, or control livestock upon; or
- (f) park or place any vehicle or other item so as to obstruct traffic or store any vehicle (any vehicle left standing in one place for 24 hours or more is deemed to be stored) upon or over, or camp on; or

(g) perform any type of exploration or study of levee strength, composition, anomalies, construction materials, or structural characteristics; or

(h) tamper with any District ditches, ditch pumps or switch boxes, or place any obstructions in District ditches or on top of District pipelines, valves or related facilities (unless expressly approved by the District Superintendent), or damage any pipelines, standpipes, valves, pumps or other property of the District, or otherwise interfere with the orderly operation of the ditch system; or

(i) place tree or vine prunings, cuttings, branches, brush, weeds, grass, or other materials into the District ditches or placed on or adjacent to the ditch banks, where they might fall, slide, or be blown into the District ditches; or

(j) except from a launching ramp or other facility maintained for that purpose, launch any boat from reclamation works (including the rock riprap or other wave wash protection thereon) of or within the District or upon lands the District owns an easement except when expressly permitted to do so by a proper and revocable written permit, easement or agreement executed between said person and the District and upon payment to the District of any required fees, expenses, rental, or other compensation thereof.

SECTION IV. Middle Road. No person shall, and it shall be unlawful for any person to, do any of the following in or along the road running through the center, in a north-south direction, of the District, commonly referred to as "Middle Road."

(a) place, erect, construct, or maintain any pipeline, pole, pole line, cable, gate, fence, barrier, barricade, conduit, rail, building, structure, obstructive vegetation, or works of any kind upon it that compromises its accessibility or the ability to travel over it; or

(b) leave, place, maintain, ride, drive, or control livestock upon, other than for purposes of loading or unloading the livestock into rolling stock; or

(c) park or place any vehicle or other item so as to obstruct traffic (any vehicle left standing in one place for 24 hours or more is deemed to be stored).

SECTION V. Non-conforming Encroachments. Any encroachments (as set forth in Section III above) on, over, or within any reclamation works of or within the District which encroachments existed at the time of adoption of the original Rules and Regulations and were not properly authorized by an Encroachment Permit from the District are considered to be non-conforming. No such non-conforming encroachments may be expanded, replaced, or modified by any person except when expressly permitted to do so by a proper and revocable written Encroachment Permit executed between said person and the District and upon payment to the District of any required fees, expenses, rental or other compensation thereof. If a non-conforming encroachment is damaged, destroyed, or otherwise becomes inoperable by or from any cause, the owner may request, and the District shall issue, an encroachment permit authorizing the reconstruction or replacement of the encroachment to the condition as it existed prior to the damage or destruction, subject to reasonable terms and conditions. These Rules and Regulations are not intended to and shall not render legal or proper any

encroachment heretofore occurring which was not in accordance with law including the regulations of this District.

SECTION VI. Levee Excavation. Excepting work performed by District, all excavation of the levees, pursuant to these Rules and Regulations or otherwise, is prohibited.

SECTION VII. Encroachment Permit. Approval of any permit by the Board of Trustees or Committee of the Board (duly designated by the Board of Trustees) pursuant to these Rules and Regulations shall be contingent upon 1) the applicant agreeing to assume all liability resulting from the proposed installation, 2) the applicant agreeing to hold the District harmless from any additional costs occasioned by such construction and necessitated by any future work on the levee by the District, and 3) the applicant complying with any other conditions which the Board or Committee of the Board in its discretion from time to time deem appropriate.

The applicant should submit three (3) completed copies of the application, and three (3) copies of the plot plan and/or applicable plans to the Engineer for the District. All applications must contain sufficient information to allow complete study of the proposed encroachment. Accurate representation of the existing conditions is the responsibility of the applicant.

The Board or Committee of the Board may at its discretion refuse to issue any or all permits and may from time to time establish general standards or guidelines for encroachments (including pipes and conduits) which shall be conditions to the issuance of any permit. The Board or Committee of the Board may from time to time in its discretion adopt a standard application form or forms for use in administration of the permit procedure provided herein.

In addition to an encroachment permit issued by the Board or Committee of the Board, the applicant must also obtain approval from other permitting agencies as required by law (such as the Central Valley Flood Protection Board, Corps of Engineers, Sacramento County, etc.).

In the event of dissatisfaction or disagreement by any owner, or other interested party, with an administrative decision rendered by an employee or Board with reference to any matter included within these Rules and Regulations, the complaining party may petition the Board for reconsideration of the matter. The petition must be in writing and be made within 30 days after adoption of the decision. The petition shall contain the name and address of the petitioner, the specific action of which petitioner requests reconsideration, the specific reason the action was inappropriate or improper, and the specific action which the petitioner requests. After consideration of the petition, the Board may grant the requested relief, deny the requested relief, or take other appropriate action. The Board's decision shall be final.

An encroachment permit issued by the Board or Committee of the Board should be obtained prior to obtaining other agency permits.

SECTION VIII. Encroachment Permit Fees. In order to defray District costs and expenses incurred in reviewing and processing Encroachment Permit applications, an application for an Encroachment Permit shall be accompanied by payment of a fee in accordance with the application form and fee schedule attached hereto as Exhibit A.

SECTION IX. District's Right of Entry. The District, by any authorized agent or employee, shall have the right to enter upon any property within the District at all reasonable times and places to determine compliance with these Rules and Regulations.

SECTION X. Interpretation; Constitutionality; Severability.

(a) In interpreting and applying the provisions of these Rules and Regulations, the requirements contained herein are declared to be minimum requirements for the purposes set forth.

(b) These Rules and Regulations are not intended to and shall not be construed or given effect in a manner that imposes upon the District, or any officer, employee or consultant thereof a mandatory duty of care towards persons or property within the District or outside the District so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

(c) The provisions of these Rules and Regulations, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatement and continuations and not as new enactments.


(d) If any section, subsection, sentence, clause or phrase of these Rules and Regulations is for any reason held to be unconstitutional or invalid, any such decision shall not affect the validity of the remaining portions of these Rules and Regulations. The Board hereby declares that it would have passed these Rules and Regulations and every section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

(e) These Rules and Regulations shall upon effect supersede and replace the provisions of the other rules and regulations of the District in conflict herewith.

SECTION XI. Violations. Any person who violates, whether by negligence, carelessness, or intent, any of the provisions of these Rules and Regulations shall in addition to suffering from any remedy imposed in law be liable to the District for all costs and expenses incurred by the District in correcting, repairing, or removing the violation.

SECTION XII. Cease and Desist Order. In addition to all of the other remedies provided herein with regard to any violation of these Rules and Regulations after issuing a cease and desist order or order for removal or alteration and after issuing 72 hours prior written notice of same by mail or by publication (in accordance with Governmental Code Section 6061) to the person or persons involved, the District may perform at the cost and expense of the person or persons in violation any corrective work deemed appropriate or necessary by the Board.

DATED: 5/18/10


Secretary

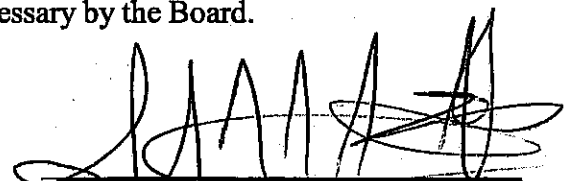

President - Board of Trustees

EXHIBIT A

Encroachment Permit Fees

1. Landowners that have paid the most recent District assessment and currently owe no money to the District will not typically be required to pay a base fee for an encroachment permit.
2. Landowners that are currently delinquent in any District assessment or fee shall be required to submit a \$500 base fee along with their permit application.
3. Entities that are not landowners within the District shall be required to submit a \$750 base fee along with their application.
4. Each of the above base fees are subject to modification by the Board if review of the permit application will entail more than two hours of engineering or legal review. In which case, the applicant may be required to pay a fee based upon the number of hours needed to review the project.