

CHAPTER 16
REGULATIONS FOR NON-DISTRICT USE OF
SALT LAKE AQUEDUCT AND
POINT OF THE MOUNTAIN AQUEDUCT
RIGHTS OF WAY

Last Updated: June 14, 2010

PREFACE

This chapter of the P&P contains regulations governing the use of the Salt Lake Aqueduct (SLA) and Point of the Mountain Aqueduct (POMA) rights of way, construction, excavation, removal and/or placement of materials, or other earth work, on SLA and POMA rights of way, and construction near enough to SLA and POMA rights of way to potentially adversely impact those rights of way, by persons or entities other than the District.

16-1 GENERAL BACKGROUND

(1) SLA. The SLA is critical to the water supply of Salt Lake City's retail water service area, Sandy City's retail water service area, and other areas of Salt Lake County and Utah County. The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) designed and constructed the SLA under authority of the Reclamation Act of 1902 and the Public Works Administration Appropriation Act of 1938. Since 1938, the District has been responsible for the operation and maintenance of the SLA, has been repaying to the United States all costs incurred in constructing the SLA, and has been entitled to the use of the SLA. Pursuant to the Provo River Project Transfer Act, Pub.Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States, title to the SLA was transferred to the District on October 2, 2006.

(2) POMA. POMA is a pipeline and associated facilities constructed by the District to convey water to the District's member cities. The District owns POMA facilities and is responsible for the operation and maintenance of all POMA facilities. POMA is critical to the water supply of Salt Lake City's retail water service area, Sandy City's retail water service area, and other areas of Salt Lake County and Utah County.

(3) The intent of this Chapter is to provide guidelines and authorization to staff for the licensing of uses of District corridors. Licenses should reasonably accommodate other uses of District corridors so long as it is clear that such uses will not materially interfere with the District's interests in the use, operation, maintenance, repair and replacement of District facilities. Except as otherwise directed by the Board, fees for licenses should be reasonably calculated to generally recover direct and indirect District

costs associated with evaluating, approving, and administering such licenses. The Engineering Committee or Board may authorize licenses in addition to those the staff is authorized to issue by this chapter, or make exceptions to the regulations, where doing so would serve the interests of the District and the public.

16-2 GENERAL INTENT OF REGULATIONS

(1) District Assumption of Reclamation Agreements. Reclamation has historically provided, by agreement, underlying fee owners, adjoining landowners, and others, the right to use portions of the SLA right of way pursuant to 43 United States Code, Section 387; 43 Code of Federal Regulations, Part 429, and Reclamation Manual/Directives and Standards LND 08-01. As a condition of title transfer, the District assumes all of the rights and responsibilities of Reclamation under validly existing Reclamation agreements for use of the SLA right of way.

(2) District's Proprietary and Regulatory Interests. Portions of the SLA and POMA rights of way are held in fee, and portions are held under easement. Portions of the POMA right of way are located under roads or city parks pursuant to license or franchise agreements. The application of these regulations will necessarily vary depending upon the nature of the ownership interest of the District. Regardless of the nature of the District's ownership interest in the right of way, the District has regulatory authority as a subdivision of the State of Utah to protect District facilities.

(3) Fair Market Value of Use of District Fee Lands. The District is generally obligated by state law to charge fair market value for use of fee lands. *E.g., Salt Lake Co. Comm'n v. Salt Lake Co. Attorney*, 985 P.2d 899 (Utah 1999); *Municipal Building Authority of Iron Co. v. Lowder*, 711 P.2d 273 (Utah 1985); *Sears v. Ogden City*, 533 P.2d 118 (Utah 1975). The District's policy is that it will make reasonable efforts to comply with this requirement, and also reasonably recover the estimated actual costs to the District of processing and administering Encroachment Agreements, but will otherwise attempt to minimize charges.

(4) SLA Rights Reserved by the United States. Pursuant to the Provo River Project Transfer Act, Pub.Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States, the United States transferred the title of the SLA to the District and the United States reserved an easement for the continued, lawful, non-motorized public access across the SLA to adjacent public lands. The United States also reserved an easement for Central Utah Project facilities within Utah County. All uses of the SLA right of way are subject to these easements. The District's General Manager may deny a new or renewed encroachment agreement if the District or other agency has any outstanding encroachment issues with the applicant or related persons or entities.

(5) Security. The SLA and POMA are critical public infrastructure, and as such the use of SLA and POMA rights of way will be subject to federal, state, local and

District statutes, regulations, rules, ordinances, policies and procedures designed to protect public health, safety and welfare.

(6) Non-motorized Public Trail Development. The District believes that public, non-motorized recreational trail use of portions of the SLA and POMA rights of way can be developed in a manner that does not adversely impact the security of the SLA or POMA, and does not adversely impact the District's ability to use, operate, repair, inspect, maintain or improve SLA or POMA facilities. The District may allow such recreational trail development.

(7) Non-licensed Encroachments. The District may periodically review its rights of way to identify non-licensed encroachments. The District may take action to remove such encroachments or bring encroachments in compliance with these regulations, including payment of all required fees and charges as applicable.

16-3 DEFINITIONS

(1) "Applicant" - A person or entity who applies for issuance of an Encroachment Agreement by the District.

(2) "District" - The Metropolitan Water District of Salt Lake & Sandy.

(3) "Encroachment Agreement" - The Agreement issued to a Grantee who has successfully completed the application process.

(4) "Grantee" - The person or entity applying for and receiving an Encroachment Agreement from the District for use of SLA or POMA rights of way. Any reference in these regulations to "Grantee" should also be interpreted as referring to Grantee's contractors, subcontractors, employees, agents or representatives.

(5) "Hazardous Materials" include:

(a) Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1981, et seq., and the regulations promulgated pursuant to such statutes.

(b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the United States Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto).

(c) Such other substances, materials and wastes which are or become regulated or which are classified as hazardous or toxic under federal, state, or local laws, statutes, ordinances or regulations. This does not include public sewers.

(6) “POMA” or “Point of the Mountain Aqueduct” - A large transmission pipeline that provides municipal and industrial water to the District’s member cities. The District owns, operates and maintains POMA.

(7) “Reclamation” or “Bureau of Reclamation” - A bureau of the United States Department of the Interior that designed and constructed the SLA and originally held title to the SLA.

(8) “SLA” or “Salt Lake Aqueduct” - The SLA is a large transmission pipeline that provides municipal and industrial water to the District’s member cities. Title to the SLA was transferred to the District on October 2, 2006 pursuant to the Provo River Project Transfer Act, Pub. Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States.

16-4 WRITTEN ENCROACHMENT AGREEMENT REQUIRED

(1) Vehicle Access. Except where SLA or POMA is located under a validly existing public road, street or highway, a valid Encroachment Agreement is required for any vehicle access on or over the SLA or POMA. Weight restrictions for SLA and POMA pipe must be strictly observed.

(2) Excavation, Earthwork, Construction, Etc. Any excavation, removal of material, placement of material or other earth work, or construction work on SLA or POMA rights of way where the District holds fee title or easement requires a valid Encroachment Agreement.

(3) Improvements to Previously Approved Encroachments. Any improvement to a previously approved encroachment on District rights of way requires a new Encroachment Agreement.

(4) Form of Encroachment Agreement. Encroachment Agreements shall be specifically tailored to reflect the proposed use by the Grantee and, therefore, may contain terms, conditions and/or limitations that are not reflected in previous or sample Encroachment Agreements. The District’s General Manager is authorized to execute Encroachment Agreements that are consistent with these regulations and applicable law on behalf of the District. All activities conducted on SLA or POMA rights of way pursuant to an Encroachment Agreement shall be in strict conformity with these regulations.

(5) Encroachment Agreement Time Periods. The Encroachment Agreement is valid for the time period specified in the Encroachment Agreement. The maximum

time period for an Encroachment Agreement is 25 years if the Encroachment Agreement is issued to a public agency or utility. If the Encroachment Agreement is issued to a private organization or home owner, the maximum time period is 15 years.

(6) Encroachment Agreement Renewal. At the end of the effective time period, the Grantee shall remove the encroaching facility or renew the Encroachment Agreement. The Grantee shall pay all required fees and charges as applicable to renew the Encroachment Agreement.

(7) Grantees Responsible for Employees, Contractors. Grantees are strictly liable for failure of their employees, agents, contractors or subcontractors to perform in strict conformity with the Encroachment Agreement and these regulations.

(8) Public Use of District Rights of Way. Use of District rights of way by the public will not be permitted without a separate easement agreement requested by the Grantee and granted by the District prior to issuance of the Encroachment Agreement.

16-5 APPLICATION PROCEDURES, FEES

The District's General Manager is authorized to develop application forms, instructions, and procedures to guide the Grantee through the application process. The District's Board of Trustees shall adopt a fee schedule for application fees, processing fees, right of use fees, and any other fees consistent with these regulations. The Board may delegate to the General Manager the ability to establish appropriate fees for use of fee title lands. Fees for use of fee title lands may be waived in whole or in part by the General Manager to the extent that the licensed use is determined to be beneficial to the District (e.g., landscaping is developed and maintained by others).

16-6 GENERAL REQUIREMENTS

(1) Service Interruption. The SLA and POMA are pipelines that remain in service year-round and are critical to the water supply of hundreds of thousands of people. **Service interruptions of either the SLA or POMA must be expressly authorized by the District's General Manager, and are not permitted except in very extraordinary circumstances.** Unauthorized interruptions to pipeline service of the SLA or POMA will not be tolerated and could result in the responsible party paying any and all incidental and consequential damages including, but not limited to:

- (a) Lost revenue from water sales;
- (b) Engineering personnel time;
- (c) Operation and maintenance personnel time;

(d) All costs required to return the affected pipeline back to its full service capacity;

(e) Any costs incurred by the District's member cities that are over and above the normal costs associated with the affected pipeline;

(f) The value of the water which could not be used due to the interruption; and

(g) Third party claims tied to lack of water.

Unauthorized interruptions of service will likely result in criminal and civil actions, particularly if determined to be willful or negligent. The District will participate in, and direct vigorous enforcement activities against, any persons who cause, or who are associated with causing, any unauthorized interruptions in service of the SLA or POMA.

(2) Contamination of Water Supply. Water conveyed by the SLA and POMA is used in a municipal and industrial water supply. The Grantee shall not introduce pollutants or place foreign materials of any kind in water conveyance facilities. In the event of a hazardous material spill, or if there is any release of materials into the water that may affect the operation of the SLA or POMA, the Grantee shall notify the District immediately.

(3) Prior Notice

(a) Following the issuance of an Encroachment Agreement, the Grantee shall invite the District to any Pre-Construction Meeting.

(b) The Grantee shall contact the District either in writing or by phone at least one week in advance of any planned test excavation or construction activities within District rights of way.

(4) Construction Activities

(a) The Grantee shall designate a representative for field operations who shall be the sole representative of the Grantee and the Grantee's contractors in dealings with the District, and shall provide their name, address, and telephone number to the District prior to commencement of construction.

(b) The Grantee shall limit its construction to the approved encroaching facilities and construct the improvements strictly in accordance with the approved plans or specifications.

(c) The Grantee shall notify the District upon completion of construction.

(d) Within sixty (60) days after conclusion of construction operations, all construction materials and related litter and debris, including vegetative cover accumulated through land clearing, shall be disposed of in an appropriate manner.

(5) Storage of Equipment or Materials. Equipment or materials shall not be stored on access roads, or other access areas, unless specific written approval is given by the District. All persons or entities using access roads shall coordinate with the District to allow District personnel access to any access roads.

(6) Hazardous Materials, Pesticides, Pollutants

(a) Storage, handling, use, or transportation of hazardous materials is strictly forbidden on or adjacent to any District right of way without the prior written permission of the District. All state, federal and local statutes, rules, regulations and ordinances concerning the use of hazardous materials, insecticides, herbicides, fungicides, rodenticides, and other similar substances shall be strictly observed.

(b) Prior to the use of hazardous materials, insecticides, herbicides, fungicides, rodenticides, and other similar substances on or adjacent to District rights of way, the Grantee shall obtain, from the District, approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application, and such other information as may be required. All use of such substances on or near the District rights of way shall be in accordance with the approved plan. If the use of a substance is prohibited by the Environmental Protection Agency, it shall not be used. If use of a substance is limited by the Environmental Protection Agency, it shall be used only in accordance with that limitation.

(7) Vegetation, Restoration and Reseeding

(a) Except as otherwise agreed by the District in writing, ground surfaces within District rights of way must be restored to a condition equal to that which existed before the encroachment work began, or as shown on the approved plans or specifications.

(b) The Grantee shall exercise care to preserve the natural landscape and shall conduct its construction operation so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage that may be caused by the Grantee's construction operations and equipment unless otherwise directed by the District. Movement of crews and equipment within the rights of way and over routes

provided for access to the work shall be performed in a manner to prevent damage to roadways, grazing land, crops, or property.

(c) Plans for restoration of District rights of way areas where soils and surface materials are disturbed through actions incident to construction, operation, and maintenance shall be approved by the District.

(d) The Grantee shall be responsible for prevention and suppression of all uncontrolled fires that are caused by the Grantee, its agents, or assigns. The Grantee shall be responsible for restoration of damaged areas.

(8) Damage to District Facilities. All damage to District facilities shall be repaired by the Grantee to the satisfaction of the District. If emergency repair work is necessary, or the Grantee fails to complete all work covered by the applicable agreement with the District in a reasonable time as determined by the District, any remaining or incomplete work will be performed by the District and the Grantee will be required to reimburse the District for all expenses incurred by the District in completing the work.

(9) Unanticipated Conditions. If unanticipated field conditions are encountered while a project is being undertaken, the District reserves the right to impose additional or more stringent requirements than may be generally described in this Chapter 16. The District may also issue a written amendment to the Encroachment Agreement.

(10) Record Drawings. Within 30 days of completion of construction, the Grantee shall provide to the District three (3) copies of record drawings. The record drawings shall include, but not be limited to, X,Y,Z, GPS coordinates of District facilities, utility crossings, manholes, drains, power poles, etc. A topographic survey shall be completed to document any changes to grade. Electronic files of record drawings shall be submitted to the District in a format acceptable to the District.

16-7 PROTECTION STANDARDS

(1) Surface Structures

(a) Surface structures are allowed within District rights of way so long as construction and use of those surface structures do not alter or interfere with the use, operation, maintenance, repair, replacement or improvement of any District facilities. Approved surface structures include asphalt roadways (without utilities), parking lots, curbs, gutters, sidewalks, walkways, driveways and patios that are non-reinforced and not connected to buildings. All surface structures are subject to approval by the District on an individual basis.

(b) Surface structures located over District pipelines shall be designed to meet maximum allowable loading restrictions and minimum cover requirements as determined by the District.

(c) Except as otherwise expressly agreed in writing by the District, if the District determines that it is necessary to remove or damage surface structures for the use, operation, maintenance, repair, replacement, or improvement of any District facilities, repair or replacement of the removed or damaged surface structures will be the responsibility of the Grantee and its successors.

(2) Buildings, Other Structures. Buildings and other permanent structures are not allowed to be constructed within or overhanging District rights of way. The following types of structures are not allowed: buildings, footings, foundations, retaining walls, block or concrete slab walls, decks, carports, trailers, light poles, flag poles, trampolines, motor cross facilities, power poles, swimming pools, wading pools or ponds, decorative pools or ponds, or similar water features. Other types of permanent structures not listed will be evaluated by the District for approval.

(3) Vehicle Access Weight Restrictions

(a) No vehicular traffic will be allowed over Type A SLA pipe unless adequate protection is provided and specifications approved by the District. No vehicular traffic exceeding HS-20 loading will be allowed over Type B, C, and D SLA pipe unless adequate protection is provided and specifications approved by the District.

(b) No vehicular traffic exceeding HS-20 loading will be allowed over the POMA unless adequate protection is provided and specifications approved by the District.

(4) Reasonable and Efficient District Access

(a) The District shall have reasonable and efficient access to all portions of District rights of way and facilities. No fences or similar barrier will be allowed within District rights of way except as consistent with these regulations.

(b) Except for District purposes, installation of new or replacement fences is not allowed on District fee title property. Existing fences, previously authorized by agreement prior to October 2, 2006, on or across District fee title property may, by agreement, remain until District activities require removal. Other uses of District fee title property will be allowed as set forth in other sections of this chapter of the P&P. Fences without footings or foundations may be allowed on property encumbered by District easements on a case by case basis. Concrete walls and masonry block walls will not be allowed. Grantee shall permit reasonable and efficient access to enclosed portions of District rights of way.

(c) Fences enclosing District structures or rights of way shall provide gated openings large enough to permit reasonable and efficient access by District maintenance vehicles without damaging the fence and improvements of the District rights of way user. Grantee shall allow District to install District locks on access gates.

(d) All fences within District rights of way are subject to removal by District as required to maintain or replace pipe or structures. Except as otherwise expressly agreed in writing by the District, removal and replacement of fences shall be the responsibility of the Grantee and its successors.

(5) Trees and Vines

(a) No new trees or vines will be allowed within District rights of way. Existing trees and vines within 20 feet of centerline of District pipelines or on access paths and roads used by District are not allowed. Existing trees and vines outside 20 feet of centerline of District pipelines or on access paths and roads used by District may remain until removal is required for safe operation or replacement of the pipeline or access paths and roads at the sole discretion of the District.

(b) All vegetation within the District rights of way shall be maintained by the property owner or Grantee, as the case may be. All vegetation within District rights of way is subject to removal by District as required to maintain or replace pipe or structures. Except as otherwise expressly agreed in writing by the District, removal and replacement of vegetation shall be the responsibility of the Grantee and its successors.

(6) Changes in Ground Surfaces, Lateral Support

(a) All temporary or permanent changes in ground surfaces within District rights of way are encroaching structures and require an encroachment agreement. Grantee is required to comply with District requirements for minimum and maximum depths of cover over the SLA and POMA.

(b) Any fills and cuts on properties adjacent to District rights of way shall not encroach onto District rights of way without specific written prior approval by the District. Modifications of properties adjacent to District rights of way shall not reduce lateral support for District rights of way without specific written prior approval by the District.

(7) Drainage From or Onto District Rights of Way. Existing gravity drainage over and from District rights of way must be maintained at all times. Any erosion from construction, operation, maintenance or use activities must be controlled at all times. No new concentration of surface or subsurface drainage may be directed onto or under the District rights of way without a showing of adequate provisions for removal of drainage water, and the specific prior written approval of the District.

(8) Test Excavation. Prior to final design of any structure that encroaches within District rights of way, an excavation must be made to determine the location of existing District facilities. Any such excavation must be made only by, or in the presence of, authorized District personnel.

(9) Bedding for pipe or other District facilities, Compaction. Grantee is required to comply with District requirement related to bedding of pipe and other District facilities and compaction requirements.

(10) Metallic Strip. Any nonmetallic encroaching structure below ground level shall be accompanied with an approved locator wire running through the entire length of the District right of way.

(11) Utility Crossings

(a) Utility crossings of District rights of way will require an encroachment agreement on an individual basis. All applicable state, city, and county regulations shall be adhered to in the construction of utilities. Where utilities will be constructed by or for a developer, but dedicated to a municipality or other local governmental entity or regulated public utility, the District will require the Encroachment Agreement to be signed by that municipality or other local governmental entity or regulated public utility.

(b) All utility crossings shall provide a minimum of eighteen (18) inches of clearance between pipeline or conduit and the SLA or POMA. All sewer lines shall be installed in a carrier pipe extending a minimum of 25 feet each side of SLA or POMA centerline, as directed by the District. All culinary pipeline crossings under the SLA or POMA shall be installed in a carrier pipe extending a minimum of 25 feet each side of SLA or POMA centerline, as directed by the District. Carrier pipes shall consist of either welded steel pipe or welded HDPE. Coating, lining and thickness of carrier pipes shall be approved by the District.

(c) Angles of crossing utilities shall be 90 degrees in relation to the SLA or POMA whenever practicable, and not less than 60 degrees. Parallel utilities are not allowed within District rights of way.

(d) Metal pipes which are in close proximity to and may affect District pipelines shall implement corrosion protection measures that provide adequate protection of the District's pipelines.

(e) Boring of utility crossings may be required by the District. Decisions will be made on an individual basis.

(f) If material from the excavation is not suitable as backfill, it shall be removed from the site by and at the expense of the Grantee.

(g) Any buried utility shall be accompanied with warning tape. This tape shall be located 12 inches above the structure and extend from right of way edge to right of way edge.

16-8 APPEALS

Any decision of the General Manager regarding District rights of way may be appealed to the Engineering Committee. All appeals shall be in writing explaining the reasons for the appeal. In order for appeals to be considered by the Engineering Committee, the written appeal must be received within 30 days following receipt of the decision of the General Manager and at least 10 business days prior to the next scheduled Engineering Committee meeting. Replies will be answered in writing. Any decision of the Engineering Committee regarding District rights of way may be appealed to the District's Board of Trustees. All appeals shall be in writing explaining the reasons for the appeal. In order for appeals to be considered by the District's Board of Trustees, the written appeal must be received within 30 days following receipt of the decision of the Engineering Committee and at least 10 business days prior to the next scheduled Board of Trustees meeting. Replies will be answered in writing.