

After recording mail to:

MAMMOTH DITCH COMPANY

P.O. Box 312
Belgrade, MT 59714

ENCROACHMENT PERMIT

The MAMMOTH DITCH COMPANY (hereafter referred to as MDC) hereby grants to _____ (hereafter referred to as Permittee) permission to _____

in the following location (legal description of area of encroachment)

subject to the following terms and conditions:

WHEREAS persons may not encroach upon or otherwise use or impair MDC's canal, or its primary or secondary easement, without obtaining approval and an easement therefore;

1. Plans and specifications for any encroachment or disturbance or placement of any facility must be approved by MDC. An encroachment or disturbance or placement of facility means the construction, or the placement, and any work associated therewith, of any facility, including utility lines, pipes, pipelines, culverts, bridges, trees, buildings, etc., over, across, on, under, through, or near the MDC's canal, laterals, embankment, or right-of-way thereof. Any installation must be capable of conveying the continuous and uninterrupted flow rate historically required for the section of ditch in question, which may vary from approximately 25 to 75 cfs, depending on the amount of water allotted to downstream users. MDC requires at minimum a 60" squash/arch culvert (approximate dimensions are 55" by 65") or its equivalent in any MDC primary canal.
2. Any encroachment, disturbance or placement of facility by Permittee, over, across, under, on or near MDC's canal, laterals, and embankment thereof, **MUST BE DONE BETWEEN**

NOVEMBER 1 AND APRIL 1, unless a specific written exception is granted by MDC. Permittee shall contact the MDC at least twenty-four (24) hours in advance of any actual encroachment, disturbance, or placement of facility.

3. Relocation of any portion of MDC's canal system is strictly prohibited unless a specific written exception is granted by MDC.
4. Any disturbance, or encroachment, or placement of facility must be properly reclaimed (including revegetation). Permittee is responsible for weed control in all disturbed areas. Any cuts or disturbance of MDC's main canal and embankment shall be reclaimed to ensure that the solid integrity of the canal will not give way or leak. Reclamation may include repacking with bentonite or similar material, installation of a liner, or both to be determined by MDC. Repacking with bentonite shall be at a minimum application rate of 2.5 lb/ft² to a minimum finished blanket thickness of 4 inches unless a different repacking method is agreed to by MDC. Final reclamation shall be approved by MDC prior to and after Permittee's encroachment, disturbance, or placement of facility.
5. MDC shall be entitled to use the road easement in the operation and maintenance of its canal. The Permittee shall have right of access and use of its easement under this Agreement so long as such access and use by Permittee does not interfere with the normal operation and maintenance of MDC's canal.
6. The Permittee will take necessary actions to ensure that the easement does not create a nuisance or hazard to the public.
7. The Permittee shall take necessary precautions to warn or prevent the public from using MDC's easement, in a manner which might result in harm or damage to MDC's canal, the Permittee, or the public, or which might result in accumulation of debris or dumping of waste in MDC's canal. These precautions may include the construction of a safety curb along the canal and and/or posting appropriate signage (e.g., "No Trespassing") along the canal.
8. The installation of any culvert, bridge, fence, or any other "facility" will be such as to allow MDC access to cleaning, and allow safe and efficient operation, and maintenance of its canal and laterals.
9. The Permittee shall be responsible for the cleaning, and maintaining, of any facility it constructs or places in MDC's canal or laterals. Permittee shall be responsible for any damage associated with the encroachment, disturbance, or placement of facility by Permittee.
10. The Permittee, and/or its contractors, shall provide MDC with proof of insurance, prior to any encroachment, disturbance, or placement of facility. MDC may require that it be listed as an additional insured on the Permittee's policy, depending on the nature of the encroachment and degree to which the Permittee's activities alter the historical use of the property on which the encroachment occurs.

11. The Permittee SHALL PAY A FEE TO MDC for this permit, which fee is generally based upon MDC's estimated costs and expenses associated with the implementation and administration of this permit. The following different types of encroachments, disturbances, or facilities are considered:
- a. Said fee is currently \$50 per linear foot of installation or facility, plus recording fees, for any encroachment, disturbance, or placement of facility on MDC's main canal or laterals, which fees are payable in advance of construction or placement to MDC. Any culvert installation shall include at a minimum a grate on the upstream end of the culvert unless a specific written exception is granted by MDC.
 - b. Said fee for a single crossing of the ditch through boring below the ditch is \$500, and the fee associated with other crossings of the ditch will be determined based on the specifics of the crossing, the overall impact of the crossing on MDC's canal and operations, and the amount of inspection required to ensure the canal's integrity is maintained. Any installation under the canal must be a minimum of 3 feet below the bottom of the canal.
 - c. Said fee for installations outside the canal but within the canal easement (e.g., street lights) will be determined based on the impact of the installation on MDC's ability to perform routine maintenance. The canal easement is defined as no less than 40 feet in width, i.e., 20 feet extending from the center line on either side of the canal. If the installation has no impact on MDC's operations, a permit may be issued with no associated fee other than the recording fee.
 - d. Other requirements may exist depending on the nature of the encroachment. These requirements will be determined based on the impact and potential safety concerns posed by the encroachment. For example, a change in historical use to create open space that may be readily accessed by a significant number of people may require fencing at a specified setback.
 - e. Landscaping and ongoing maintenance (e.g., contouring, mowing) of ditch banks may be allowed to be done by the permittee with written consent by MDC and will be determined on a case by case basis. No landscaping vegetation other than grass may be planted within 20 feet extending from the center line on either side of the canal unless a specific written exception is granted by MDC.

MDC's general costs and expenses associated with this permit include a review of Permittee's plans, site inspection, development, operation, and enforcement of this permit system, record keeping, on site inspection prior to, during, and after construction, and possible inconvenience and expenses related to said encroachment, disturbance, or placement of facility, during future years of operation, maintenance, and cleaning MDC's canal and laterals. If MDC has to clean, repair, or maintain any encroachment, disturbance, or facility of Permittee, MDC shall do so, and send the Permittee a bill for such services.

12. Permittee is liable for any consequential damages related to or caused by Permittee's encroachment, disturbance, or placement of facility. Permittee agrees to indemnify and hold harmless the MDC from any damages arising out of Permittee's encroachment, disturbance, or facility.
13. In the event MDC shall at any time in the future change the location or elevation of its canal or laterals at the point above referred to, necessitating any change in the location of the

encroachment, disturbance, or placement of facility, the cost of the change of location of such encroachment, disturbance, or facility to meet the needs of the MDC shall be borne by the Permittee.

14. In the event the MDC in the use and operation of the irrigation system, damages the encroachment, disturbance, or facility of the Permittee that the Permittee will not claim any damage from the MDC except in such instances as the damage is caused by the willful or gross negligence of the MDC, its representatives, contractors, agents, or servants.
15. If MDC owns less than the entire and undivided fee simple title in said lands, then this easement applies only to the interest they have.
16. This Permit shall also be binding on any other successor or assignee of the Permittee.
17. If Permittee is a contractor, agent, or other representative for another principal, city or county government, or any other person or entity, this Permit shall be binding on such principal, government, and such other person or entity. This Permit shall also be binding on any other successor or assignee of the Permittee.
18. In the event of an action brought over the terms and conditions of this Agreement, the prevailing party in such action shall be entitled to its reasonable attorney's fees and costs from the non-prevailing party.
19. Unless otherwise specified by MDC, activities related to any permitted encroachment may commence once MDC receives a copy of the permit which has been signed by both the Permittee and MDC, along with payment of any fee associated with the permit.
20. Permittee is responsible for recording the final signed permit with the Gallatin County Clerk and Recorder's office and for providing MDC with a copy of the recorded permit. Permit shall be considered incomplete and may ultimately be voided by MDC if a copy of the permit that has been recorded by the Gallatin County Clerk and Recorder's office is not received by MDC in a reasonable period of time, not to exceed 3 months from the date MDC receives the signed permit and payment.
21. NOW THEREFORE, for valuable consideration in the amount of _____ MDC grants onto permittee its successors and assigned a perpetual easement for the purpose of construction of the encroachment or installation described above and/or as shown on the easement EXHIBIT A attached hereto and made a part hereof over and across the described lands in Gallatin County.
22. Other terms, conditions and exceptions include: _____

MAMMOTH DITCH COMPANY
PERMIT

MAMMOTH DITCH COMPANY
BY: _____
ITS _____

On _____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public Signature:

Print: _____
Title: _____
STATE OF MONTANA
COUNTY OF _____

I AGREE TO THE TERMS AND CONDITIONS OF THIS PERMIT:

PERMITTEE: _____
BY: _____
ITS _____

On _____, before me, the undersigned, a Notary Public for the State of Montana, of Montana, personally appeared _____, whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public Signature:

Print: _____
Title: _____
STATE OF MONTANA
COUNTY OF _____