

# The Overland Ditch and Reservoir Company

and

*Applicant*

## LICENSE AGREEMENT FOR CROSSING

1. **PARTIES.** The parties to this License Agreement are The Overland Ditch and Reservoir Company, (“Ditch Company”), and *Applicant* (“Licensee”). The Ditch Company and Licensee are jointly referred to as the Parties.

2. **RECITALS.** The Licensee desires to obtain the permission of the Ditch Company to construct one crossing under the Overland Ditch. Licensee owns property legally described in **EXHIBIT A**. The Ditch Company agrees to permit the proposed crossing, subject to the terms, conditions, covenants and agreements set forth in this License Agreement. Accordingly, in consideration of the mutual promises set forth in this License Agreement, the Parties covenant and agree as follows:

3. **CONSTRUCTION.** Pursuant to the terms of this License Agreement, the Licensee is granted the license to construct a single one and one half inch poly pipe undershot (“the Installation”) pursuant to the plans and specifications approved by the Ditch Company and attached hereto as **EXHIBIT B**. The Ditch Company’s review of the plans and specifications is solely for its own benefit and creates no obligation on the Ditch Company.

3.1 All portions of the Ditch, bottoms, sides, banks, and all affected portions of the Ditch Company’s easement which are disturbed by the Licensee’s Installation shall be restored to their original condition so the flow of the water in the Ditch runs at the original amount and velocity. Any and all fencing and other facilities appurtenant to the Ditch Company’s easement shall be replaced in a condition at least equal to the condition of such facilities and appurtenances prior to construction.

3.2 In the event that dirt, debris or other foreign material is spilled into the Ditch, the Licensee agrees to completely clean the affected portions of the Ditch.

3.3 The Licensee agrees that the Installation shall proceed expeditiously and with reasonable diligence from the commencement of construction to its completion. The Installation shall be completed by \_\_\_\_\_, \_\_\_\_\_. If the Installation is not completed by that date, this License Agreement expires and is of no force or effect. Should the installation not be completed by \_\_\_\_\_, \_\_\_\_\_, Licensee agrees to return all effected portions of the ditch to the original and fully operational condition state.

4. **LICENSE FEE.** The Licensee shall pay to the Ditch Company a non-refundable license fee of \$\_\_\_\_\_. The license fee shall be paid upon execution of this License Agreement to the commencement of the Licensee’s construction. This license fee shall be in addition to any other costs for which the Licensee is responsible pursuant to this License Agreement.

## 5. INSPECTION.

5.1 The Licensee shall notify the Ditch Company at least five (5) days prior to commencement of the Installation, or replacement or repair of the Installation permitted by this License Agreement, except for emergency repairs which are provided for in paragraph 7 of this License Agreement. The Ditch Company is permitted to inspect the Installation or replacements and repairs during construction. Upon completion of the Installation, the Ditch Company may inspect the Installation.

5.2 The Ditch Company's right to inspect the Licensee's Installation or replacement of the Installation in no way relieves the Licensee of its liability for improper Installation. The Ditch Company's inspection is solely for the benefit of the Ditch Company and creates no obligation to the Ditch Company.

## 6. REIMBURSEMENT OF EXPENSES.

6.1 The Licensee agrees to reimburse the Ditch Company (or pay directly) for all reasonable engineering and legal costs incurred by the Ditch Company in preparing and approving this License Agreement and the costs of inspection as described in paragraph 5.

6.2 Statements for the costs chargeable to Licensee hereunder will be forwarded to Licensee and the same shall be paid to the Ditch Company within 30 days after the billing date. If payment has not been received by Ditch Company within 30 days, Licensee shall have breached this License Agreement and Ditch Company may institute legal proceedings to collect the amount due and owing. In such proceeding, Ditch Company shall be entitled to its costs and reasonable attorneys' fees from Licensee.

## 7. MAINTENANCE.

7.1 Licensee specifically agrees and pledges to maintain repair and replace the Installation described in **EXHIBIT B** so as not to require the Ditch Company to maintain, repair or replace it. If Licensee fails to properly maintain, repair or replace any portion of the Installation for which it is responsible after ten days' notice of the need for same, Ditch Company may, at its own option, conduct its own maintenance, and repair, which may include removal of the Licensee installation, in order to quickly return the ditch to operational condition and Licensee shall reimburse Ditch Company for the cost of such work within 30 days. In the event Licensee fails to maintain, repair or replace the Installation, it shall be held liable for any loss, damage or injury to Ditch Company. If the Ditch Company conducts its own maintenance, repair or replacement, it does not waive the right to hold Licensee liable for damages caused by Licensee's failure to maintain, repair or replace.

7.2 In the event of an emergency, Ditch Company or Licensee may conduct maintenance or repair immediately, giving notice to the other party as soon as possible at the emergency contacts identified in paragraph 11. If Ditch Company conducts emergency work, it shall be reimbursed for the cost of the work. Under no circumstances shall the Ditch Company be responsible or held liable for damages to the

Installation resulting from maintenance or repair to the Ditch.

8. **WATER LOSS.** The Licensee agrees that the Installation will not increase carriage or transit loss over the loss which occurred historically. The Licensee agrees to compact earth materials so that such additional water losses will not occur. If the Licensee's Installation increases carriage or transit loss in the Ditch, the Licensee agrees to repair the construction to prevent such additional loss.

9. **LIABILITY AND INDEMNIFICATION.**

9.1 By virtue of entering into this License Agreement, the Ditch Company: (1) assumes no liability for use, operation, or existence of the Licensee's Installation; and (2) assumes no additional responsibilities or obligations related to the Licensee's future or additional activities in the area described in **EXHIBIT A** which are required by this License Agreement.

9.2 The Licensee agrees to indemnify and hold harmless the Ditch Company, from all claims and liability for damage or injury to property or persons arising or caused directly or indirectly by the Licensee's construction, restoration, maintenance of, or failure to maintain, the Installation and the Licensee's occupancy and use of the area located in **EXHIBIT A**.

10. **EASEMENT RIGHTS.** The License granted to the Licensee herein in no way restricts the Ditch Company's right to the use of its easement to construct, operate, or maintain all existing structures and facilities of the Ditch.

11. **NOTICES.** Any notice required or permitted by this License Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. mail.

DITCH COMPANY:

COPY TO:

\_\_\_\_\_  
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\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ - \_\_\_ - \_\_\_\_ Phone

\_\_\_ - \_\_\_ - \_\_\_\_ FAX

LICENSEE:

COPY TO:

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\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_ - \_\_\_ - \_\_\_\_ Phone

e-mail

12. **WAIVER OF BREACH.** The waiver by any party to this License Agreement of a breach of any term or provision of this License Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

13. **RECORDATION.** This License Agreement shall be recorded at the cost of Licensee and shall be binding on any successors of the Parties. The obligations and benefits of this License Agreement shall specifically run with the land described in **EXHIBIT A**. The failure to record all or portions of **EXHIBIT B** because of the size of the documents shall not affect this License Agreement.

14. **EXHIBITS.** All exhibits referred to in this License Agreement are, by reference, incorporated in this License Agreement for all purposes.

Tom Howe, President,  
Overland Ditch and Reservoir Co.

*Applicant*  
G R BAR Ranch

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A – Crossing Location Description**

**LICENSE AGREEMENT FOR CROSSING**

**The Overland Ditch and Reservoir Company**

**and**

***Applicant***

**EXHIBIT B – Project Description**

**LICENSE AGREEMENT FOR CROSSING**

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