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WATER RIGHTS
SALT LAKE

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR JUAB COUNTY, STATE OF UTAH

RED CEDAR CORPORATION, a Utah
Corporation, Plaintiff,

vs.

GEORGE C. DOUGLASS, VERONICA
F. DOUGLASS, and GEORGE C.
DOUGLASS Jr., akn as BUCK
DOUGLASS, and John Does 1-10,

Defendants.

:
:
: JUDGMENT ON
: STIPULATION

:
: Civil No. 6484

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: Judge Ray M. Harding
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This matter having come regularly before the court upon the Stipulation and Motion of the parties for the entry of Judgment in accordance with the terms and conditions of a Stipulation on file herein in which the parties have settled and fully compromised this matter; and it appearing to the Court that the Stipulation is proper in all respects and for good cause appearing therein: IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is Utah Corporation and has its principal place of business in Juab County. Plaintiff is the owner of certain lands, vested water rights and pending, approved Applications to Appropriate and Applications for the Permanent Change of use of water in Juab County, Utah.

2. Defendants are residents of Juab County, and are the owners of certain lands, approved Applications to Appropriate and an approved Application for a Permanent Change of use of water in Juab County, Utah.

3. This court has jurisdiction over the parties and their real property and water rights pursuant to Section 78-3-4 U.C.A., (1953), as amended. Venue is proper in Juab County pursuant to Section 78-13-1, U.C.A. (1953) as amended.

4. That Plaintiff is the owner of the following vested, perfected water rights and pending, approved Applications to Appropriate and an application for a Permanent Change of Use of water in Granite and Red Cedar Creeks:

18-32, A6044, Certificate 2348; as modified by approved Change application a-381, and by approved Change Application a-1432, and by Change Application a-14271.

18-33, A7600, Certificate 2349, as modified by approved Change Application a-14271.

18-578, A62215 (approved)

18-559, A61494 (approved)

18-558, A61493 (approved)

18-553, A61441 (approved)

5. Defendants are the owners of the following pending, approved Applications to Appropriate and an application for the Permanent Change of Use of the waters in Granite Creek:

18-510, A59782 (approved)

18-432, A55214 (approved)

18-577, A55214a (segregation application, approved), as modified by approved, Permanent Change Application a14128, Certificate of Change a13106.

6. That the vested water rights and pending approved Applications to Appropriate and for Permanent Change of the water in Granite Creek in order of their relative dates of priority of during the period of time of April 1 through October 31, inclusive, are as follows:

NAME	W A T E R U S E R S C L A I M NUMBER	FLOW	DATE OF PRIORITY	OF USE	PERIOD OF USE
1. (USA)	BLM 18-552	1.507 cfs	prior to 1903	livestock 3608 ELU, domestic 2 families, fishery	1/1-12/31 1/1-12/31 1/1-12/31

2 . Red C e d a r Corp.	18 - 32 , C e r t . 2 3 4 8 , a14271	18.0 cfs, limited to 2182 ac.ft.	1/28/1915	i r r . 727.6 ac. domestic 3 families livestock 3000 ELU storage, 1 8 6 ac.ft.	4/1-10/31 1/1-12/31 1/1-12/31 0 1 / 1 - 12/31
3 Falken- b e r g Mines	18 - 149 , C e r t . 5305	0.11 cfs	9/11/1953	mining domestic 9 persons	1/1-12/31 1/1-12/31
4. George C Douglass	18-432	3 . 8 3 3 c f s , limited to 469.22 ac.ft.	9/12/1980	i r r . 156.807 ac.	4/1-10/31
5. BMB Ent.	18-464 A57215 approved	8.0 cfs	12/21/ 1981	power	1/1-12/31
6. George C Douglass	18-510 A59782 approved	4.0 cfs uses same water as 18-432	3/26/1984	power	4/1- 1 1 / 1 - 12/31
7. Red C e d a r Corp.	18-599 A61494 approved	18.0 cfs	1/23/1986	i r r . 2,000 ac.	4 / 1 - 1 0 / 3 1 , s a m e water on new lands

8. George C Douglass	a14128, Cert. of Change a13106, (18-577)	0 . 1 6 7 c f s , limited to 12.78 ac.ft.	12/17/ 1986	irr. 3.0 ac. livestock 46 ELU domestic 2 families	4/1-10/31 1/1-12/31 1/1-12/31
9. Red Cedar Corp.	a14271 (18-32)	18.0 cfs	3/19/1987	a d d e d storage in new reservoir 3 6 . 4 0 ac.ft.	4 / 1 - 10/31

The diversion and use of the water from Granite Creek for irrigation purposes shall be governed strictly by the order of priority set forth above. Neither party shall be entitled to divert water for irrigation purposes out of priority. The parties further acknowledge that if the application of BMB Enterprises, 18-464, should lapse that Defendants' application 18-510, as well as all other subordinate applications, would move up in priority.

7. The vested water rights and pending Applications to Appropriate and for Permanent Change of the water in Granite Creek in order of their relative dates of priority of during the period of November 1 through March 31, inclusive, are as follows:

NAME	W A T E R U S E R S C L A I M NUMBER	FLOW	DATE OF PRIORITY	USE	PERIOD OF USE
1. BLM (USA)	18-552 dil.	1.507 cfs	prior to 1903	Livestock 3608 ELU	1/1-12/31
				domestic 2 families fishery	1/1-12/31 1/1-12/31
2. Red C e d a r Corp.	18-32 C e r t . 2349	18.0 cfs	1/28/1915	domestic 3 families Livestock 3000 ELU storage, 1 8 6 ac.ft.	1/1-12/31 1/1-12/31 0 1 / 1 - 12/31
3 Falken- b e r g Mines	18-149 C e r t . 5305	0.11 cfs	9/11/1953	mining domestic 9 persons	1/1-12/31 1/1-12/31
4. BMB Ent.	18-464 A57215 approved	8.0 cfs	12/21/ 1981	power	1/1-12/31
5. George C Douglass	a 14 128 , Cert. of Change a13106, (18-577)	0 . 1 6 7 c f s , limited to 12.78 ac. ft.	12/17/ 1986	domestic 2 families Livestock 46 ELU	1/1-12/31 1/1-12/31

6.	Red	18-578	13.00 cfs	12/19/	livestock	1/1-12/31
	C e d a r	A62215		1986	3000 ELU	
	Corp.	approved			domestic,	1/1-12/31
					3	
					families	
					storage	11/1-3/31
					irr. 200	
					acres	11/1-3/31

It is agreed that there are to be no diversions under Defendants' change application a14128 (18-577) for irrigation or power generation during this time period. It is further agreed that the 13.00 cfs application of Red Cedar, 18-578 is from the tail water from the BMB hydro plant. If no water is diverted for power generation by BMB under its application 18-464 during this time period, no water can be diverted by Red Cedar under 18-578. The parties further acknowledge that if the application of BMB Enterprises, 18-464, should lapse that Defendants' application 18-510, as well as all other subordinate applications, would move up in priority, and that Defendants would have the right to pursue their power appropriation.

8. That the vested water rights and pending, approved Applications to Appropriate water in Red Cedar Creek in order of their relative dates of priority of appropriation are as follows:

NAME	W A T E R U S E R S C L A I M NUMBER	FLOW	DATE OF PRIORITY	USE	PERIOD OF USE
1. BLM (USA)	18-563 dil.	6.561 cfs	prior to 1903	livestock 3608 ELU fishery	1/1-12/31 1/1-12/31
2. Red C e d a r Corp.	18-33 C e r t . 2349	20.0 cfs	1/4/1918	irr 727.6 ac. supp. to 18-32 storage, 1 8 6 ac.ft.	4/1-10/31 0 1 / 1 - 12/31
3. Red C e d a r Corp.	18-553 A61441 approved	5.0 cfs	12/26/ 1985	power	1 / 1 - 12 / 31 , s a m e water as 18-33
4 . R e d C e d a r Corp.	18-558 A61493 approved	20. cfs	1/23/1986	i r r . 2,000 ac. new acres	4 / 1 - 10 / 31 , s a m e water as 18-33
5. Red C e d a r Corp.	a14271 (18-33)	20.0 cfs	3/19/1987	a d d e d storage in new 3 6 . 0 0 a c . f t . reservoir	4/1-10/31

Defendants have withdrawn their pending Application to Appropriate 18-533, which sought to appropriate 8.00 cfs of water from Red Cedar Creek. Therefore, Defendants own no water rights or pending applications in Red Cedar Creek and have no right to claim, use or divert any water therefrom.

9. That notwithstanding the relative dates of priority of the parties water rights and pending applications to appropriate and for a change of use in Granite Creek, the parties agree that Defendants may connect onto Plaintiff's pipeline and divert water for domestic, irrigation, power generation through an in-line turbine and livestock watering purposes only under a lease agreement to be entered into by the parties hereto. The lease shall provide that Defendants may use a continuous flow of water for the above stated purposes at a rate not to exceed 20 gallons per minute (gpm), hereinafter referred to as "Leased Water." The lease shall run year to year, commencing January 1 and concluding December 31 of each year, and may be renewed annually provided that Defendants have not violated the terms and conditions of this Judgment or the terms and conditions of the lease. It is understood that the Leased Water is available to Defendants at all times during the lease term, regardless of the availability of water to Defendants under their own water rights in other water sources. Rent for the water so leased shall be equal to Plaintiff's share of the River Commissioner's annual expenses incurred by him in the performance of his duties. Rent shall be due and payable by Defendants within 30 days of the parties receipt of a

statement or invoice from either the State Engineer or the River Commissioner for his expenses. This Judgment shall not be construed as or constitute a subordination of Plaintiff's prior vested water rights in Granite and Red Cedar Creeks to any of Defendants' pending application. The parties further agree that this Judgment and lease agreement that is to be entered into in accordance with this Judgment shall be filed with the State Engineer and shall become a part of his permanent files in connection with the above vested water rights and pending applications.

10. The parties acknowledge that the water in Plaintiff's pipeline is not of culinary quality. Plaintiff shall have no obligation to treat or otherwise render the water in its pipeline suitable for human consumption. Defendants shall have the right to use the Leased Water as provided in paragraph 9 of this Judgment, in its "as is" condition. Defendants shall bear all costs involved in the purchase, installation, operation and maintenance of any water treatment facilities that they may wish to install on their own pipeline or water system in order to make the Leased Water they receive from Plaintiff's pipeline of potable quality.

11. Plaintiff hereby grants to Defendants a revocable license to connect on to Plaintiff's pipeline for the purpose

of using the Leased Water. This connection shall be made at Defendants' sole expense and shall be subject to Plaintiff's prior review and approval of the location, type and installation of any such connection, which approval shall not be unreasonably withheld. Defendants shall reimburse Plaintiff for its reasonable costs incurred in reviewing any plans and specifications for any such connection. This license may be revoked by Plaintiff upon 10 days written notice to Defendants of their breach of this Judgment or upon the termination or non-renewal of the lease provided for in Paragraph 9. hereof. If Defendants fail to cure their default within the 10 day notice period, or upon the termination or non-renewal of the lease, Plaintiff shall be entitled to disconnect Defendants from its pipeline and/or diversion structure and this license shall automatically terminate. Upon the termination of this license, Defendants shall have no further right to take water from Plaintiff's pipeline. Any costs incurred by Plaintiff in disconnecting Defendants shall be reimbursed by Defendants.

12. Plaintiff shall use its best efforts to use all available water from Red Cedar Creek under its water rights therein in conjunction with its Granite Creek water and to not allow that resource to waste. Plaintiff shall endeavor to

satisfy its senior irrigation rights through the use of these combined sources of supply and to not create an artificial shortage of water in Granite Creek to Defendants' exclusion, when there is water available for Plaintiff's use in Red Cedar Creek which, when added to its rights in Granite Creek, might satisfy Plaintiff's rights and provide some water for Defendants' irrigation use under its junior priority irrigation rights in Granite Creek.

13. Each party shall retain control of their pipeline system, headgates, meters, valves and diversion facilities, subject, however, to the review and monitoring of the River Commissioner to be appointed as provided herein, and the administrative orders of the River Commissioner and/or the State Engineer regarding the diversion and distribution of water by the parties. Neither Defendants nor anyone acting on their behalf as their agent, an employee or otherwise, shall tamper with, damage, break or interfere with Plaintiff's locks and controlled gates and valves on Plaintiff's pipeline and diversion facilities, or to otherwise cause more water to enter Defendants' pipeline from Plaintiff's pipeline than Defendants are entitled to receive under their junior applications, this Judgment and the Lease to be entered into pursuant to this Judgment. In the event Defendants' violate

the provisions of this Judgment, Plaintiff shall have the right, without notice, to immediately disconnect Defendants from Plaintiff's pipeline and Plaintiff shall be relieved of its obligation under this Judgment and the Lease agreement to be entered into, to deliver domestic, irrigation and livestock water to Defendants until such time as Defendants pay for the repair of Plaintiff's facilities and, until Defendants have paid to Plaintiff a penalty of \$1,000 per each occurrence of tampering or otherwise altering the valve settings or interfering with Plaintiff's prior vested water rights. This remedy shall be in addition to any other remedy which Plaintiff might have at law or in equity and shall be specifically enforceable by this Court.

14. The Court shall retain jurisdiction to enforce the terms and conditions of this Judgment. Should either party default in the performance of their obligations under this Judgment, the non-defaulting party shall, in addition to all other remedies, be entitled to recover its or their costs and reasonable attorney's fees incurred in enforcing this Judgment, regardless of whether enforcement is pursued through litigation or otherwise.

15. Should Plaintiff fail to provide Defendants the Leased Water while the lease is in force or interfere with

Defendants' use of their irrigation water during those periods of time when there is water available in Granite Creek and Red Cedar Creeks over and above that required to satisfy Plaintiff's prior irrigation rights, Defendants shall be entitled to proceed to court for an affirmative injunction requiring Plaintiff to deliver such water as Defendants are then entitled to divert and use based upon Defendants' priority and the stream flow conditions. In the event Defendant prevails in any such action, Defendants shall be entitled to collect from Plaintiff a penalty of \$1,000 for each violation of this Judgment by Plaintiff. In addition, Defendants shall be entitled to recover their costs and reasonable attorney's fees as provided in paragraph 14 hereof.

16. The parties have each been ordered by the Utah State Engineer to install measuring devices at their respective points of diversion or at such other location or locations in their water systems as will accurately measure the quantity of water being diverted and used by each party. The costs of installing these measuring devices shall be borne by the parties individually. The Court takes notice that these measuring devices are installed and are properly functioning.

17. Each party hereby grants to each other and to the State Engineer and his duly authorized agents the right of

access at reasonable times to inspect each other's measuring device(s) and to review the flow records which each party agrees to maintain on a regular basis. All flow measurements shall be submitted at least quarterly to the Division of Water Rights for its review and information by both parties.

19. Either party may request the other party to have its or their flow meter or other measuring device checked and calibrated if the requesting party questions the accuracy of the other's measuring device. If the suspected meter or other measuring device(s) is malfunctioning or is under registering the flow of water passing through it by more than 5%, the party owning the malfunctioning measuring device shall have it repaired and/or recalibrated at its or their sole expense. If upon examination, the questioned meter or other measuring device is reading accurately or is over registering the flow by more than 5%, the party challenging the accuracy of the measuring device shall pay all costs incurred by the other party in having its or their meter or other measuring device checked. All such repair and recalibration reports shall be submitted to the State Engineer for his records.

20. The parties agree that some water has been allowed historically to seep around and otherwise escape Plaintiff's diversion facilities. In the event that Defendants file an

application with the Division of Water Rights to appropriate and use this water, Defendants agree to not excavate below Plaintiff's diversion facilities in any manner that will or may undermine the bed of Granite Creek or that may disturb the natural siltation and cementing of the stream bed so as to cause increased seepage and conveyance loss in the stream channel above Plaintiff's diversion and/or head gate facilities, or to cause an increase in the amount of water seeping around or under Plaintiff's diversion facilities to Plaintiff's detriment. Defendants further agree that if they are successful in appropriating and capturing this seepage water, that the lease provided for in Paragraph 9 hereof, shall immediately terminate and be of no further force and effect and that Defendants will thereafter take their domestic, irrigation and livestock water from that source and their other water rights and will disconnect their domestic line from Plaintiff's pipeline. Thereafter, Plaintiff shall have no further obligation to deliver defendant's water from its pipeline for any purpose, and Defendants shall no further right to take and/or receive any water from it.

21. The Court hereby Orders the State Engineer under authority of Section 73-5-1 U.C.A. (1953) to immediately appoint Cecil Garland as a River Commissioner for the purpose

of placing the measurement and distribution of the waters of Granite Creek and Red Cedar Creek under the direct control of an officer of the State Engineer. All expenses associated with the appointment of the river commissioner, including the payment of his salary and expenses shall be paid jointly and proportionately by the parties on a 50/50 basis. So long as the Lease referred to in paragraph 9 hereof is in full force and effect, Plaintiff's share of these expenses shall be paid by Defendants as rent for the Leased Water as provided for herein. If the lease is terminated for any reason as provided in paragraph 9 hereof, the parties shall each pay their own share of the River Commissioner's expenses.

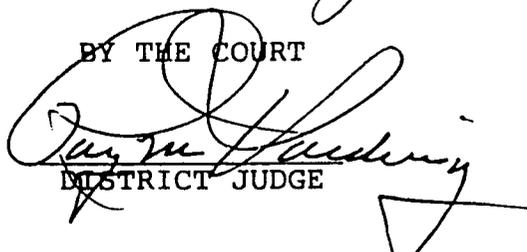
22. The parties hereto and their heirs, successors, administrators and assigns and all those acting by, through, or for them are hereby permanently enjoined from wrongfully tampering, interfering with, damaging or altering the settings of each other's valves or head gates, dams and other water distribution facilities, or otherwise interfering with each other's water rights.

24. Defendants shall reimburse Plaintiff the sum of \$3,000 for its attorney's fees incurred in bringing this action. This payment shall be made in a single lump sum payment of \$3257.06 on or before 30 days from the date of the

entry of this Judgment. Plaintiff shall bear the remainder of its attorney's fees and costs. Defendants agree to be responsible for payment of their own attorney's fees and costs incurred in defending this action.

Dated this 18 day of June, 1991.

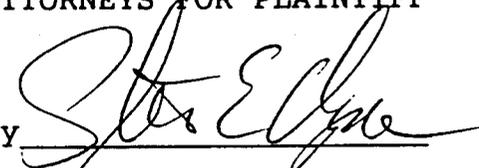
BY THE COURT


DISTRICT JUDGE

This order is approved as to form and content.

CLYDE, PRATT & SNOW P.C.
ATTORNEYS FOR PLAINTIFF

PARSONS, BEHLE & LATIMER
ATTORNEYS FOR DEFENDANTS

By 

By 