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WATER RIGHTS
SALT LAKE

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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 T.
DOUGLASS Jr., akn as BUCK
DOUGLASS, and John Does 1-10,

Defendants.

:
:
: STIPULATION FOR
: JUDGMENT

:
: Civil No. 6484

:
: Judge Ray M. Harding
:
:
:
:

The parties hereto stipulate and agree hereby as follows:

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:

RED CEDAR CREEK

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:

DUGLASS

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	USE	PERIOD OF USE
1. BLM (USA)	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 . R e d C e d a r Corp.	18 - 3 2 , 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 - 1 2 / 3 1
3 Falken- b e r g Mines	18 - 1 4 9 , 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- 11 / 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 - 10 / 31 , 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 C e d a r Corp.	a14271 (18-32)	18.0 cfs	3/19/1987	a d d e d storage in new reservoir 36.40 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	1/1-12/31
				3608 ELU	
				domestic	1/1-12/31
				2	
				families	
				fishery	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	1/1-12/31
				3	
				families	
				Livestock	1/1-12/31
				3000 ELU	
				storage,	0 1 / 1 -
				1 8 6	12/31
				ac.ft.	

3	Falkenberg Mines	18-149 Cert. 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	a14128, Cert. of Change a13106, (18-577)	0.167 cfs, 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 Cedar Corp.	18-578 A62215 approved	13.00 cfs	12/19/1986	livestock 3000 ELU domestic, 3 families storage Irr. 200 Ac.	1/1-12/31 1/1-12/31 11/1-3/31 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 a14271 20.0 cfs 3/19/1987 a d d e d 4/1-10/31
C e d a r (18-33) storage
Corp. in new
36.00
ac.ft.
reservoir

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

Stipulation, the lease and the Judgment to be entered in accordance with this Stipulation. 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 and/or the River Commissioner for his expenses. This stipulation 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 applications. The parties further agree that this Stipulation, the Judgment and lease agreement that are to be entered into in accordance with this Stipulation 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 Stipulation, 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 Stipulation 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 agrees to 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 will 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, diversion facilities, or to otherwise cause more water to enter defendants' pipeline from plaintiff's pipeline than defendants are entitled to receive under this Stipulation and their junior applications and the Lease to be entered into pursuant to this Stipulation. In the event defendants' breach this covenant, plaintiff shall have the right, without notice, to immediately disconnect Defendants from Plaintiff's pipeline and shall be relieved of its obligation under this Stipulation 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 Stipulation and the Judgment to be entered in accordance with its terms. Should either party default in the performance of this stipulated agreement, 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 stipulation, 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 stipulation 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 parties acknowledge 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 through it.

21. The parties agree that the Court may Order 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 50% share of the river Commissioner's expenses.

22. Both parties agree to the entry of a Judgment incorporating the terms of this Stipulation. The parties further agree on behalf of themselves, their heirs, successors, administrators and assigns and all those acting by, through, or for them to the Court's permanently enjoining all of them from wrongfully tampering with, interfering with, damaging or altering the settings of each other's valves or head gates, dams and other water diversion, storage and distribution facilities or otherwise interfering with each other's water rights.

23. Defendants agree to and shall reimburse plaintiff the sum of \$3,000 for its attorney's fees and ~~\$257.06~~ for its costs incurred in bringing this action. This payment shall be made in a single lump sum payment of \$3000.00 on or before 30 days from the date of the entry of this Judgment. Plaintiff agrees to bear the remainder of its attorney's fees. Defendants agrees to be responsible for payment of their own attorney's fees and costs incurred in defending this action.

24. This stipulation constitutes the full and complete agreement by and among these parties, and shall supersede all

prior oral or written agreements, statements or representations of the parties.

Dated this _____ day of _____, 1991.

RED CEDAR CORPORATION
a Utah Corporation

By _____
Its _____

George C. Douglass

George C. Douglass

Veronica F. Douglass

Veronica F. Douglass

George T. Douglass Jr.
(akn Buck)

George T. Douglass

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

PARSONS, BEHLE & LATIMER
ATTORNEYS FOR DEFENDANTS

By _____

By *[Signature]*

prior oral or written agreements, statements or representations of the parties.

Dated this 4th day of May, 1991.

RED CEDAR CORPORATION
a Utah Corporation

By Owen P. Allred
Its president

George C. Douglass

George C. Douglass

Veronica F. Douglass

Veronica F. Douglass

George T. Douglass Jr.
(akn Buck)

George T. Douglass

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

By

[Signature]

PARSONS, BEHLE & LATIMER
ATTORNEYS FOR DEFENDANTS

By

[Signature]