

WATER LEASE

THIS WATER LEASE ("Lease"), made and entered into by and between Red Cedar Corporation, a Utah domestic non-profit corporation located at Star Route 705, Trout Creek, Utah ("Red Cedar"), and the Utah Department of Natural Resources, a division of the State of Utah located at 1594 West North Temple, Salt Lake City, Utah ("DNR"). Red Cedar and DNR are referred to collectively herein as the "Parties".

WHEREAS, Red Cedar owns water rights in Granite Creek located in the Deep Creek Mountain Range in Juab County, Utah, which rights authorize it to utilize water in Granite Creek as evidenced by Water Right No. 18-32 ("Water Right");

WHEREAS, DNR maintains a complex of small ponds that support populations of wild Bonneville Cutthroat Trout ("BCT");

WHEREAS, BCT are a Utah Sensitive Species and managed under a Conservation Agreement with the United States Fish and Wildlife Service, and of great importance to the State of Utah;

WHEREAS, DNR has expended considerable resources to increase the populations and distribution of BCT in Utah, including developing and using the aforementioned ponds as a brood stock facility for producing and stocking BCT in historical ranges;

WHEREAS, DNR desires to secure a reliable water supply for the BCT brood stock ponds; and

WHEREAS, Red Cedar is willing to lease to DNR a portion of the water it is entitled to in Granite Creek under its Water Right for purposes of supplying DNR's BCT brood stock ponds, subject to the terms and conditions of this Lease;

NOW THEREFORE, for and in consideration of the mutual promises and covenants of the Parties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Red Cedar, the Parties agree as follows:

1. Red Cedar Agrees:
 - a. To lease to DNR a constant year around flow of 20 gallons per minute (GPM) of water under its Water Right in Granite Creek together with all appurtenant rights, privileges, duties and obligations, including the right to use the water in accordance with applicable law. Red Cedars' commitment to lease a continuous flow is "subject to nature making the water available.

- b. To accord DNR first priority in receiving the 20 GPM of leased water, and to not divert or block Granite Creek flows to the point of preventing a pass-through flow of 20 GPM. Red Cedar may temporarily interrupt water flow to DNR, for reasonable periods of time, as may be required for routine maintenance and cleaning of the diversion structure.
- c. To prepare, file, endorse and pay for a fixed-time change application seeking approval from the Utah State Engineer's Office ("State Engineer") of the water use changes contemplated in this Lease.

2. DNR agrees:

- a. To pay Red Cedar a onetime setup fee of \$1,000.00 upon execution of this Lease and obtaining approval from the State Engineer for the water use changes contemplated in this Lease.
- b. To additionally pay Red Cedar an annual lease payment of \$1,000.00 on June 1st of each year during the term of this Lease for the 20 GPM of water leased to DNR.
- c. To additionally pay Red Cedar \$72.00 for each 24 hour period water flows in Granite Creek continuously remain below 50 GPM (assuming 20 GPM are diverted to DNR): it being the intent of the Parties that this payment accrues only under the circumstance where DNR is taking water and Red Cedar receives less than 30 GPM in Granite Creek flows for its appropriated use. The aggregate payment, if any, will be paid to Red Cedar by October 1st of each year. This additional payment is intended to compensate Red Cedar for the loss of water, as used under water right # 18-32, due to the DNR making a priority call on the water.
- d. To construct, maintain and read a gauging station on Granite Creek located upstream from the diversion structure diverting water to the BCT brood stock ponds property.
- e. To cooperate in preparing and filing the change application seeking State Engineer approval for the water use changes contemplated in this Lease.

- f. To accept the water lease granted by Red Cedar, assuming the State Engineer approves the change application made by Red Cedar concerning this change of use.
- g. To utilize the 20 GPM of water leased to supply the ponds and tributaries holding BCT.
- h. To hold Red Cedar harmless for:
 - (1) the quality of the leased water, provided any compromised water quality is not the direct or indirect consequence of Red Cedar's intentional misconduct or negligent acts.
 - (2) damages or injury associated with the performance of this Lease which result from acts of God.
 - (3) any compromise in water quality or disruption in water flow to the BCT brood stock ponds that occurs once the leased water has been diverted from Red Cedar's head gate or impounding pond.
 - (4) any compromise in water flow due to lack of water available in the Granite Creek stream.
 - (5) any disruption in water flow (the 20 GPM) due to natural plugging of the diverting structure by leaves, sticks, and other naturally occurring stream debris: it being the intent of the Parties that Red Cedar is not responsible for keeping the diversion structure clean, and that DNR may periodically check and clean the diversion structure supplying the 20 GPM leased water.
 - (6) any disruption in water flow (the 20 GPM) caused by acts or occurrences beyond Red Cedar's control.

3. General Terms:

- a. **Water Use.** DNR shall have primacy in using the leased water for the benefit of BCT, including the sole right to determine pond levels, inflow volume, and outflow volume.
- b. **Lease Term.** The term of this Lease shall commence on the date it is executed by all Parties and shall remain in force for a period of three years.

- c. Liability. Each Party agrees to indemnify, hold harmless, and release the other and all their officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this Lease which are caused solely by the negligence or willful misconduct of its officers, agents, or employees. It being the intent of the Parties that no Party will indemnify, hold harmless or release another Party from its willful misconduct or gross negligence, or the negligent acts or omissions. If both Parties are negligent, they shall each bear their proportionate share of any allocated fault or responsibility. Nothing contained herein shall be construed as waiving immunity, the monetary damage limitations, or any other provision set forth in the Utah Governmental Immunity Act, Utah Code 63-30-1 through 63-30-38.
- d. Governing Law. This Lease shall be subject to and governed by the laws of the State of Utah.
- e. Assignment. DNR shall not assign, sublease or otherwise transfer this Lease or any rights or obligations hereunder, in whole or in part, without the prior written consent of Red Cedar.
- f. Entire Agreement. This Lease contains the entire agreement and understanding between the Parties, and there are no representations, understandings or agreements, oral or written, expressed or implied, that are not included herein.
- g. Counterparts. This Lease may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument. This Lease shall become operative when each party has executed at least one counterpart of this lease.
- h. Non-appropriation of Funds. To the extent this Lease requires DNR to incur debt or spend money, this contract shall be enforceable against DNR only if the legislature provides the necessary funding therefor. If funds are not appropriated or are otherwise unavailable, DNR may terminate this Lease, without penalty, by giving 30 days written notice. Nothing herein shall be construed as relieving DNR from responsibility of paying Red Cedar a pro rata lease fee under paragraph 2.b. or the liquidated damage fee under paragraph 2.c. for water actually received under this Lease prior to termination thereof. It being the intent of the Parties that DNR compensate Red Cedar pursuant to the terms of this Lease for any water it receives hereunder.

- 4. Authority: The signatories to this Lease each represent and warrant to hold lawful authority to execute this Lease in behalf of their respective organizations and to bind the same to the terms and conditions herein.

EXECUTED AND DELIVERED this 15th day of May, 2003.

RED CEDAR CORPORATION

By: *Allen A. [Signature]*

5-15-03

Date

Its: Treasurer

UTAH DEPARTMENT OF NATURAL RESOURCES:

By: *Robert A. Mosquin*

May 20, 2003

Date

Its: Executive Director