

**RESOLUTION APPROVING DEEP CREEK -
TENDER OF JUDGMENT**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

A concurrent resolution of the Legislature and the Governor approving the tender of \$850,000, plus prejudgment interest and reasonable attorneys' fees in amounts determined appropriate by the District Court, all in satisfaction of the District Court judgment for specific performance.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, in 1997, the Utah State Armory Board, entered into an Earnest Money Receipt and Sales Agreement ("Earnest Money Agreement") in which the Armory Board offered to buy 780 acres of property called Deep Creek Ranch, L.C. {sic}, located in Tooele County, for \$850,000;

WHEREAS, the terms of the sale called for the state to pay for the property in surplus property credits;

WHEREAS, after the Earnest Money Agreement was signed, the parties to the agreement found that federal law prohibited federal surplus property from being used by the parties to pay the seller;

WHEREAS, Deep Creek Ranch, LLC, filed suit against the Utah State Armory Board, Utah National Guard, and John Does I through X in 1999 when Deep Creek Ranch, LLC was unable to reach an agreement for payment with parties representing the state;

WHEREAS, on December 18, 2002, Judge David S. Young entered a Memorandum Decision in which the District Court held in part that "the term 'surplus property credits' as used in the Agreement refers to both federal surplus property and state surplus property. Since the federal property may not be used and no federal officials signed the contract, the plaintiff's remedy may be obtained only from the state surplus property.";

WHEREAS, state law prohibits the use of state surplus property as outlined in the Earnest Money Agreement because the liquidated value of state surplus property is returned to

the agency submitting the property;

WHEREAS, the last line of Judge Young's Memorandum Decision stated: "Therefore, specific performance is an appropriate remedy through use of State surplus property and is so ordered."; and

WHEREAS, part of Judge Young's Memorandum Decision stated that "because the contract is measured in cash . . . the state could simply pay the consideration called for in the contract.":

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, support a cash payment of the face value of the Earnest Money Agreement of \$850,000 to Deep Creek Ranch, LLC.

BE IT FURTHER RESOLVED that prejudgment interest on the principle of \$850,000, in an amount determined appropriate by the District Court, also be paid to Deep Creek Ranch, LLC.

BE IT FURTHER RESOLVED that reasonable attorneys' fees of Deep Creek Ranch, LLC in prosecuting this case also be paid in an amount determined appropriate by the District Court under the Earnest Money Agreement.

BE IT FURTHER RESOLVED that the principle, together with interest and reasonable attorneys' fees in amounts determined appropriate by the court, all be tendered to Deep Creek Ranch, LLC in full payment of the specific performance ordered by the Third District Court on December 18, 2002.

BE IT FURTHER RESOLVED that the Utah State Armory Board acknowledges it will accept a warranty deed to the Utah State Armory Board from Deep Creek Ranch, LLC pursuant to the Earnest Money Agreement in full satisfaction of Judge Young's Memorandum Decision of specific performance.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Office of the Attorney General with directions to tender this offer made by the Legislature of the state of Utah, the governor concurring therein, to Deep Creek Ranch, LLC.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Kraig T. Higginson, general manager of Deep Creek Ranch, LLC, and to James E. Morton and Scott S.

Kunkel, attorneys for Deep Creek Ranch, LLC.