

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

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

6 **A concurrent resolution of the Legislature and the Governor approving the tender of**
7 **\$850,000, plus prejudgment interest and reasonable attorneys' fees in amounts**
8 **determined appropriate by the District Court, all in satisfaction of the District Court**
9 **judgment for specific performance.**

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

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

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

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

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

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



28 WHEREAS, state law prohibits the use of state surplus property as outlined in the
29 Earnest Money Agreement because the liquidated value of state surplus property is returned to
30 the agency submitting the property;

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

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

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

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

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

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

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

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

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

59 Kunkel, attorneys for Deep Creek Ranch, LLC.

Legislative Review Note
as of 1-28-03 12:04 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HCR010

Resolution Approving Deep Creek - Tender of Judgment

10-Feb-03

3:12 PM

State Impact

Mailing requirements of this resolution can be handled within existing budgets. If provisions of the resolution are executed it is estimated an appropriation of \$1,435,000 would be required.

Individual and Business Impact

Parties to the contract mentioned in the resolution will be impacted if settlement is realized.

Office of the Legislative Fiscal Analyst