

## **Colorado Parks and Wildlife Hofer Agreement**

Dear Aquaculture Permittee:

Over the past several years, Colorado Parks and Wildlife (CPW) has been conducting research under the direction of Dr. George Shisler to develop whirling disease (WD) resistant strains of rainbow trout. Much of the CPW trout production has been converted to these WD resistant strains. During upcoming spawning seasons CPW anticipates the possibility of having limited amounts of surplus eyed eggs of these resistant strains. CPW recognizes that there are potential benefits to the fisheries resource of Colorado if some of these WD resistant fish are placed in appropriate private waters. Therefore, a program has been developed to distribute some of these surplus eggs to the private sector.

Consideration should be given to what is the appropriate use of these fish. Some of the strains are more suitable for lakes and some are more suitable for stream environments. Use of an inappropriate strain may result in out-migration or other poor performance. Also, since these fish are mixed strains, the WD resistance may be reduced in their offspring. By receiving these eggs, you agree that they will not be retained for use as broodstock. Marketing offspring of fish originating from these eggs is strictly prohibited without a separate agreement with the CPW. CPW has developed genetic tests to identify these resistant strains and their offspring, which could potentially be used to screen individual fish. Also, it should be noted that use of these fish will not affect the WD status of your facility. Fish normally reared on your facility will continue to be used for annual inspection purposes.

Fish from these eggs must be possessed, transported, and released in compliance with all regulations. In addition, you will not be able to stock them in CPW managed waters or in waters utilized by CPW for research projects without CPW approval. Spore counts will be required on fish held on WD positive facilities as part of your annual inspection. You will be required to report the release and disposition of these fish as a separate species on your annual stocking report.

Although CPW cannot anticipate the exact dates that surplus eggs will become available, it is anticipated that some eyed eggs should be available in most years from mid-December thru early May. The total number of available eggs is limited and the number of those wishing to receive them is unknown, so you will probably receive a fairly small number, perhaps less than 10,000.

To “get on the list” to receive some of these eggs, you will need to complete the attached Agreement and submit it to the CPW egg coordinator. Requests will be fulfilled in the order in which they are received. You will be notified of the time when eyed eggs will be available for you by e-mail. You will have to arrange to pick them up at the CPW hatchery. If you do not or cannot accept eggs when your name comes up on the list, then you will be put back on the bottom of the list.

You will be required to reimburse the CPW for these eggs at the current rate for Rainbow trout eggs from Troutlodge, with funds payable to Troutlodge, Inc., towards CPW’s account.

## Agreement

The Agreement anticipates an exchange of trout eggs between Colorado Division of Parks and Wildlife (“CPW”) and \_\_\_\_\_ hatchery (the “Hatchery”), where CPW will provide the Hatchery with a designated amount of surplus eyed trout eggs from WD resistant strains of rainbow trout (“CPW Eyed Eggs”) in exchange for an equivalent amount of Troutlodge, Inc. rainbow trout eggs (“Troutlodge Eyed Eggs”) paid for by the Hatchery. In exchange for receipt of the surplus CPW Eyed Eggs, \_\_\_\_\_ Hatchery agrees as follows:

1. The Hatchery has an Aquaculture Permit issued by the Colorado Department of Agriculture. The Hatchery’s permit number is \_\_\_\_\_.
2. CPW will distribute CPW Eyed Eggs in increments of 1,000 eggs per unit and requests for these eggs will be fulfilled by CPW in the order in which they are received.
3. By completing and submitting this Agreement, the Hatchery is merely placed on the list for CPW Eyed Eggs and is not entitled to the amount of units requested. Receipt of any CPW Eyed Eggs depends on whether CPW has remaining CPW Eyed Eggs after it has fulfilled all prior requests for the CPW Eyed Eggs. Further, the Hatchery’s preferred type of WD resistant strain of CPW Eyed Eggs may not be available for the exchange.
4. CPW will notify the Hatchery by email when the CPW Eyed Eggs are available for pick up along with a designated time period. Once the Hatchery receives the email, it must arrange a time to pick up the CPW Eyed Eggs. The pickup time and date must be agreed to by the CPW facility manager.
5. If the Hatchery cannot or does not pick up the eggs at the designated time, those CPW Eyed Eggs will be made available to the next hatchery on the list and the Hatchery’s name will go to the bottom of the list.
6. At the time the Hatchery takes receipt of the CPW Eyed Eggs, the Hatchery will reimburse CPW by providing CPW funds payable to Troutlodge, Inc. (or a payment to Troutlodge for a balance on CPW’s account) in the amount of the current market value for an equivalent amount of Troutlodge Eyed Eggs.
7. Payment for the CPW Eyed Eggs are due at the time the Hatchery takes receipt of the CPW Eyed Eggs. If the Hatchery does not provide payment at this time, it shall forfeit its spot on the list and will return to the bottom.
8. The Hatchery may not retain CPW Eyed Eggs for broodstock development or transfer them to another grower without a separate agreement with the CPW. The Hatchery may not market offspring of fish derived from these CPW Eyed Eggs without a separate agreement with CPW.
9. The Hatchery may not release these CPW Eyed Eggs or fish derived from CPW Eyed Eggs into waters managed by CPW or utilized by CPW for research without written permission from CPW.
10. The Hatchery must request a spore count on fish derived from CPW Eyed Eggs on the Hatchery’s annual disease inspection if they are on a WD positive facility. Other lots of more susceptible strains normally reared at the Hatchery’s facility will be used for disease inspections with respect to WD-negative or positive status. The Hatchery must report the stocking, release and disposition of rainbow trout derived from WD resistant strains as a separate species on its annual stocking report.
11. CPW makes no warranty, representation or guaranty on the performance of CPW Eyed Eggs and fish derived from the CPW Eyed Eggs. CPW expressly disclaims any representations and

warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. CPW is not responsible for the performance or quality of these fish or eggs and shall not be liable for their performance or quality.

12. The Hatchery shall indemnify, save, and hold harmless CPW, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by the Hatchery, or its employees, agents, subcontractors or assignees, arising out of or in connection with this Agreement.
13. Any further explanation of this Agreement in the accompanying letter dated \_\_\_\_\_ is incorporated into this Agreement; however, if the language conflicts, then the terms in this Agreement supersedes the terms in the Letter.
14. Notwithstanding anything herein to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the "Colorado Governmental Immunity Act", Section 24-10-101, *et seq.* Liability for claims for injuries to persons or property arising from the negligence of CPW of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, *et seq.* and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended.

**The Hatchery requests \_\_\_\_\_ units of CPW Eyed Eggs.**

_____	_____
<b>Signature, Title; Name of Hatchery</b>	<b>Date</b>
_____	_____
Signature for CPW	Date

To be completed upon receipt of CPW Eyed Eggs: CPW has provided \_\_\_\_\_ Hatchery with \_\_\_\_\_ units of CPW Eyed Eggs. The current market value for \_\_\_\_\_ units of Troutlodge Eyed Eggs on \_\_\_\_\_ is \$ \_\_\_\_\_. CPW acknowledges that the Hatchery has provided CPW with funds payable to Troutlodge in the amount of \$ \_\_\_\_\_.

_____	_____
<b>Signature, Title; Name of Hatchery</b>	<b>Date</b>
_____	_____
Signature for CPW	Date

**Please send completed application to:**  
  
**Colorado Parks and Wildlife**  
**Attn: Jeff Lee, Aquatics**  
**6060 Broadway**  
**Denver, CO 80216**