

APR 15 2009

Colorado Water Conservation Board

Colorado Water Conservation Board 1313 Sherman Street, Room 721 Denver, Colorado 80203	Administrative Proceeding
Concerning Instream Flow Rights On Cucharas Creek and Huerfano River, Water Division No. 2	
Drew Peternell Trout Unlimited 1320 Pearl Street, Suite 320 Boulder, Colorado 80302 Phone: (303) 440-2937 Email: dpeternell@tu.org	
<b>Trout Unlimited's Corrected Notice of Party Status Cucharas Creek and Huerfano River, Water Division No. 2</b>	

Pursuant Rule 5i of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program of the Colorado Water Conservation Board ("CWCB" or "Board"), Trout Unlimited ("TU") hereby submits this Notice of Party Status.

1. Reasons For Obtaining Party Status

Trout Unlimited's mission is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. In Colorado, low stream flow is among the most serious threats to fishery health, and TU commits considerable resources and efforts towards remedying this problem. TU is highly interested in the CWCB's instream flow program and strongly supports the CWCB in its effort to preserve and improve the natural environment through the instream flow program. In this proceeding, Trout Unlimited plans to support the Board's instream flow appropriation.

2. Contested Facts

Trout Unlimited does not contest any facts in this proceeding and concurs with the facts contained in the staff's instream flow recommendation and report.

3. Matters To Be Decided

As required by C.R.S. § 27-92-102(3)(c) and Rule 5i of the Instream Flow and Natural Lake Level Program, the Board must decide three issues:

- That there is a natural environment that can be preserved to a reasonable degree with the Board's water right, if granted;
- That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; and
- That such environment can exist without material injury to other water rights.

4. Data To Be Presented to the Board

In addition to argument, Trout Unlimited may rely on CWCB staff recommendations, reports and memos about the subject water right, including any attachments and appendices thereto, and may present any other public information, such as stream gage records. TU reserves the right to identify additional data which it may present as new information becomes available.

Respectfully submitted this 13th day of April, 2009.

A handwritten signature in black ink, appearing to read 'Drew Peternell', is written over a horizontal line.

Drew Peternell  
Counsel for Trout Unlimited

## **COLORADO WATER CONSERVATION BOARD, STATE OF COLORADO**

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### **NOTICE OF PARTY STATUS - CUCHARAS SANITATION AND WATER DISTRICT**

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#### **IN THE MATTER OF THE CONTESTED INSTREAM FLOW APPROPRIATIONS FOR CUCHARAS CREEK AND THE HUERFANO RIVER**

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Pursuant to Rule 51 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (2 CCR 408-2), and the notice provided by the Colorado Water Conservation Board ("CWCB") on April 9, 2009, the Cucharas Sanitation and Water District ("Cucharas"), by and through its attorneys Vranesh and Raisch, LLP, hereby submits its Notice of Party Status ("Notice") for the Hearing concerning the contested instream flow appropriations for Cucharas Creek and the Huerfano River. In support of this Notice, Cucharas provides the following information:

1. According to Rule 51(1), a Notice of Party Status is timely if filed on or before April 30th, or the first business day thereafter. This Notice satisfies that requirement.
2. Rule 51(1) also requires the party seeking Party Status to submit a brief and plain statement of the reasons for obtaining Party Status, the contested facts, the matters that the party claims should be decided, and a general description of the data to be presented to the Board. Cucharas responds as follows:

- a. Reason for Obtaining Party Status

In January of 2009, the CWCB formalized its intent to make new instream flow appropriations on Cucharas Creek and the Huerfano River. In the year prior to this formal action, the CWCB had alerted water users that it would consider these new appropriations, and had provided information about the proposed reaches and flow rates.

Based on the information provided by the CWCB prior to its formal action in January of 2009, Cucharas identified concerns that it had with the proposed instream flow reach for Cucharas Creek. Cucharas communicated with the CWCB about those concerns, and was able to resolve them informally. The ISF appropriation for Cucharas Creek formalized by the CWCB in January of 2009 included the stream reach that was agreed to by Cucharas, the CWCB Staff, and the Colorado Division of Wildlife.

On March 23, 2009, Huerfano County and the Huerfano County Water Conservancy District submitted a Notice to Contest Cucharas Creek and Huerfano

River Instream Flow Appropriations. It is unclear from that notice what aspects of the CWCB's Cucharas Creek and Huerfano River instream flow appropriations will be challenged, or how this contested matter will be finally resolved. Cucharas seeks party status so that it can monitor and fully participate in the Hearing so as to protect its interests.

b. Contested Facts

Cucharas does not currently have sufficient information to know what facts it might contest in this matter, and reserves the right to identify contested facts as more information becomes known or available.

c. Matters to be Decided

C.R.S. §37-92-102(3)(c) and Rule 5i of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program require that the CWCB make the following determinations prior to initiating a water right filing to confirm an instream flow appropriation:

- i. That there is a natural environment that can be preserved to a reasonable degree with the Board's water right, if granted.
- ii. That the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made.
- iii. That such environment can exist without material injury to water rights.

Cucharas does not have sufficient information as of the submittal of this Notice to state any other matters to be decided, and reserves the right to identify other matters as more information becomes known or available.

d. Data to be Presented

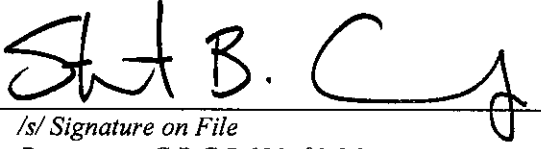
In addition to comments, argument, and legal memoranda, Cucharas may rely on information provided by the CWCB Staff, including Staff recommendations, and reports and memos concerning the subject instream flow appropriations, including the attached data and appendices. Cucharas may also present any other public information concerning the appropriations, including stream flow records, or other technical evidence and technical witnesses. Cucharas reserves the right to identify additional data which it may present as more information becomes known or available.

3. All pleadings, documents, reports, written comments, legal argument, tangible things, or other information or evidence submitted by any party or contested hearing participant with respect to the Contested Instream Flow Appropriation Hearing identified in this Notice should be provided to counsel for Cucharas as follows:

Stuart B. Corbridge (#33355)  
1720 14th Street, Suite 200  
P.O. Box 871  
Boulder, Colorado 80306-0871  
(303) 443-6151  
(303) 443-9586 (fax)  
sbc@vrlaw.com

Respectfully submitted this 28th day of April, 2009.

VRANESH AND RAISCH, LLP

By:   
*/s/ Signature on File*  
*Pursuant to C.R.C.P 121, §1-26*  
Stuart B. Corbridge (#33355)

ATTORNEYS FOR CUCHARAS  
SANITATION AND WATER DISTRICT

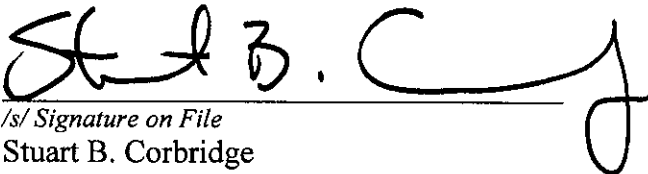
**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of April, 2009, I served a true and correct copy of the foregoing **NOTICE OF PARTY STATUS - CUCHARAS SANITATION AND WATER DISTRICT** to the following via email:

Jeff Baessler, *CWCB Staff*  
Jeffrey.Baessler@state.co.us

David M. Shohet, *Huerfano County and  
Huerfano County Water Conservancy District*  
dms@fmcwater.com

Drew Peternell, *Trout Unlimited*  
dpeternell@tu.org

  
/s/ Signature on File  
Stuart B. Corbridge

**ORIGINAL SIGNED DOCUMENT BEING RETAINED AT THE OFFICE OF  
VRANESH AND RAISCH, LLP**