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c/o Jeff Baessler (Jeffrey.baessler@state.co.us)
c/o Rob Viehl (rob.viehl@state.co.us)
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80204

Re: Comments on ISF Recommendation for Abrams Creek

Dear Colorado Water Conservation Board,

This letter is on behalf of the Buckhorn Valley Metropolitan District No. 1 (“District”). The District is writing to support the proposed increase in the ISF on Abrams Creek, but subject to completion of the piping project that will provide the added flows needed for the proposed ISF and such terms and conditions as may be necessary to protect the District’s interests on Abrams Creek.

As background, the District owns senior water rights in the J.P.O. Ditch No. 2 which diverts water from Abrams Creek. The J.P.O. Ditch No. 2 is decreed a total of 3.0 cfs under Civil Action 548 (1.0 cfs for irrigation, June 3, 1908 appropriation), and Civil Action 841 (2.0 cfs for irrigation and domestic, April 1, 1916 appropriation). The J.P.O. Ditch No. 2 is also used to fill Buckhorn Pond No. 1 as decreed in Case No. 2016CW3173.

The District entered into an agreement with Trout Unlimited dated June 28, 2016 (“Agreement”) to improve flows in Abrams Creek for the benefit of its native cutthroat trout population. The improved flows are to be accomplished by improving the efficiency of the District’s diversion and delivery system for the J.P.O. Ditch No. 2 with a pipeline project described in the Agreement (the “Project”). Subject to the terms of the Agreement, and upon completion of the Project, the District will begin leaving in Abrams Creek 40% of the water physically available for diversion

at the J.P.O. Ditch No. 2 headgate, and will further limit or stop diversions if needed to leave 1.25 cfs in Abrams Creek.

A recommendation is currently before the Board to increase the ISF on Abrams Creek by 0.75 cfs to 1.25 cfs from May 1 to September 30. The stream reach for the proposed ISF includes the J.P.O. No. 2 Ditch diversion point. Completion of the Project is needed, however, for water to be available to support an increase in the ISF on Abrams Creek to 1.25 cfs.

The District supports the increase in the ISF on Abrams Creek because it helps support the value of the Project and the native cutthroat trout population. However, the District's support is conditional because the Project has not been completed and any increase in the ISF should be contingent upon completion of the Project. Although the District is committed to pursuing the Project in coordination with Trout Unlimited, a number of steps must be satisfied before the Project can proceed. This includes obtaining all permits and approvals with conditions that are mutually acceptable to the District and Trout Unlimited, adequate funding, and other matters described in the Agreement. In addition, the District desires to ensure that any change in the diversion point location for the J.P.O. Ditch No. 2 is not impacted by the proposed ISF, and that such other terms and conditions are included in any ISF decree as may be necessary to protect the District's water rights.

For the reasons set forth above, the District will need to contest the proposed ISF appropriation. The District is providing this letter not only to identify its concerns, but also to express its support for the proposed increase in the Abrams Creek ISF if those concerns are addressed.

Sincerely,

PORZAK BROWNING & BUSHONG LLP

A handwritten signature in black ink, appearing to read 'S Bushong', written over a horizontal line.

Steve Bushong
Counsel for the Buckhorn Valley Metropolitan District No. 1

cc: John Hill, President
Mely Whiting, Trout Unlimited