

**BEFORE THE COLORADO WATER CONSERVATION BOARD
STATE OF COLORADO**

**STIPULATION AND AGREEMENT BETWEEN THE COLORADO WATER
CONSERVATION BOARD, THE BUCKHORN VALLEY METROPOLITAN DISTRICT
NO. 1 AND TROUT UNLIMITED**

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATION IN WATER
DIVISION 5: ABRAMS CREEK (INCREASE)**

The Buckhorn Valley Metropolitan District No. 1 (“Buckhorn”), Trout Unlimited (“TU”) and the Colorado Water Conservation Board (“CWCB”), by and through their respective counsel, hereby stipulate and agree as follows:

1. The staff of the CWCB has recommended an instream flow water right appropriation for Abrams Creek in the amount of 0.75 cfs (05/01-09/30) with an upper terminus located at the headwaters in the SE ¼ SE ¼ of Section 25, T. 5 S., R. 85 W of the 6th PM (UTM North: 4383025.55 UTM East: 339836.18) and the lower terminus at the Mrs. Paye Ditch Headgate in the NE ¼ NW ¼ of Section 16, T. 5 S., R. 84 W. of the 6th PM (UTM North: 4387351.32 UTM East: 343811.41) (“Abrams Creek ISF”), Water Division 5. This proposed instream flow right is an increase to the instream flow water right on Abrams Creek decreed in Case No. 80CW118.
2. Buckhorn and TU entered into an Agreement dated June 28, 2016 for the purpose of partnering on a project designed to improve flows in Abrams Creek for the benefit of its native cutthroat trout fishery while preserving Buckhorn’s ability to fully utilize its decreed water rights.
3. The CWCB agrees to include in the application filed with the water court to adjudicate the Abrams Creek ISF the following as terms and conditions to be included in any decree entered by the water court, and to include these terms and conditions in any decree entered by the water court for the Abrams Creek ISF:
 - A. The instream flow water right sought herein benefits from and helps preserve improved Abrams Creek flows achieved through implementation of a project called the Abrams Creek project. The Abrams Creek project is an irrigation delivery efficiency project by which portions of the J.P.O. Ditch (which includes the consolidated J.P.O. No. 1 Ditch and J.P.O. No. 2 Ditch) are piped to reduce losses, and the owner of the J.P.O. Ditch, Buckhorn Valley Metropolitan District (“Buckhorn”), agrees to reduce diversions and leave certain flows in Abrams Creek, as further described in and subject to the conditions of an agreement between the District and Trout Unlimited dated June 28, 2016 (“TU Agreement”). The CWCB contributed significant funding to the Abrams Creek project.

- B. To help ensure the instream flow water right sought herein benefits from the Abrams Creek project, and does not impair that project, the CWCB agrees to the following conditions:
- i. The CWCB recognizes that the water rights decreed to the J.P.O. No. 2 Ditch in Civil Action 548 (1.0 cfs for irrigation under a June 3, 1908 appropriation), Civil Action 841 (2.0 cfs for irrigation and domestic under an April 1, 1916 appropriation) and Case No. 2016 CW3173 (up to 3.0 cfs to fill and refill Buckhorn Pond No. 1), are senior to the subject instream flow appropriation sought herein.
 - ii. Modifications to infrastructure may be needed in the future to accommodate operation of the Abrams Creek project, including the fish screen on the diversion structure. CWCB hereby recognizes the benefits of the Abrams Creek project and agrees it shall not use its Abrams Creek instream flow water right sought herein to prevent infrastructure modifications or operations which Buckhorn and TU agree are necessary to effectuate the TU Agreement.
 - iii. If, due to naturally occurring circumstances outside the control of Buckhorn, changes to the natural channel of Abrams Creek occur or repairs to the J.P.O. No. 2 Ditch and headgate are needed and it becomes physically necessary to move the J.P.O. No. 2 Ditch diversion point, whether upstream or downstream, the instream flow water right sought herein shall not be relied upon in any way to prohibit or condition any such move of the diversion point or to require a change of water right associated with any move of the diversion point, so long as: (1) the diversions at the relocated J.P.O. No. 2 Ditch diversion point continue to be subject to the TU Agreement; (2) the relocation is consistent with said Agreement; and (3) Buckhorn will not divert the water rights decreed to the J.P.O. No. 2 Ditch when there is 1.25 cfs or less in Abrams Creek at the relocated point of diversion for the J.P.O. No. 2 Ditch headgate.
4. The CWCB agrees it will not require, or condition any approval or consent upon the requirement, that Buckhorn pay for or construct a measuring structure that would be used to administer the instream flow water right sought herein, unless such structure is necessary to administer changes in Buckhorn's water rights or operations not contemplated by changes to the Abrams Creek project specified in paragraphs 3.B.ii and 3.B.iii, above.
 5. In consideration of the mutual promises contained herein, Buckhorn and TU agree not to oppose any water court proceeding to adjudicate the Abrams Creek ISF. Provided, however, Buckhorn and TU reserve the right to file a statement of opposition in any water court adjudication to ensure that the CWCB remains in compliance with the terms and conditions agreed upon by the parties.

6. This stipulation shall be binding upon and inure to the benefit of the parties, their successors and assigns.
7. The parties shall each bear their own attorneys' fees and costs associated with this matter.
8. CWCB shall provide counsel of Buckhorn and TU copies of its application to confirm a water right for the Abrams Creek ISF and any proposed rulings or decrees that are submitted by the CWCB to the water referee or water court, as applicable. CWCB shall also provide said counsel with any Report of the Division Engineer issued in such case.
9. This stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Stipulated and agreed to this 10th day of September, 2018.

PORZAK BROWNING & BUSHONG, LLP
*Attorneys for Buckhorn Valley Metropolitan
District No. 1*



Steven J. Bushong, #21782
2120 13th Street
Boulder, CO 80302
(303) 443-6800
sjbushong@pbblaw.com

OFFICE OF THE COLORADO
ATTORNEY GENERAL
*Attorneys for the Colorado Water
Conservation Board*



Jennifer Mele, #30720
Andy Nicewicz, #44903
1300 Broadway, 7th Floor
Denver, CO 80203
(720) 508-6282
jennifer.mele@coag.gov
andy.nicewicz@coag.gov

TROUT UNLIMITED



Amelia S. Whiting, #19035
PO Box 1544
Pagosa Springs, CO 81147
(720) 470-4758
mwhiting@tu.org