

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

**IN THE MATTER OF PROPOSED INSTREAM FLOW APPROPRIATIONS IN WATER
DIVISION NO. 5:**

**ABRAMS CREEK
(Headwaters to Mrs. Paye Ditch Headgate)**

EAGLE COUNTY, COLORADO

TROUT UNLIMITED'S PARTY STATUS REQUEST

Trout Unlimited (TU) respectfully requests Party Status in this matter. Trout Unlimited is a non-profit, membership organization with over 300,000 members and supporters nationwide. Our mission is to conserve, protect and restore North America's coldwater fisheries and their watersheds.

TU has submitted a letter joining the recommendations of the U.S. Bureau of Land Management (BLM) and Colorado Parks and Wildlife (CPW) to increase the CWCB's instream flow right in Abrams Creek, a tributary of the Eagle River. TU's letter describes its involvement in this matter.

Reasons for Obtaining Party Status

TU has a vested interest in ensuring that the proposed minimum instream flow (ISF) rights for Abrams Creek are adopted. TU and its partners, including Buckhorn District, have raised over \$1 million to implement a pipeline project (the Abrams Creek Project) that will improve the efficiency of delivery of JPO Ditch water, reducing the District's JPO Ditch diversion needs. Under the terms of its agreement with TU, "immediately upon completion of construction of the project" Buckhorn District will forego diversion of 40% of available Abrams Creek flows and cease all diversions if Abrams Creek flows are 1.25 cfs or less.

Approximately 75% of the funds for the Abrams Creek project are derived from the CWCB through two grants: a WSRF grant awarded to Trout Unlimited, and a Fish and Wildlife Mitigation grant awarded to Buckhorn District. Thanks to these generous awards, the Abrams Creek Project is currently underway and is expected to be completed by September 2018.

The proposed ISF rights appropriation is necessary to protect the investment by CWCB and others by ensuring that the minimum 1.25 cfs flows remain in Abrams Creek.

Contested Facts and Matters to be Decided

1. *Material Injury to Buckhorn Water Rights.* The proposed ISF right is junior to Buckhorn's water rights and, therefore, cannot interfere with the District's ability to diver its senior JPO Ditch rights. Moreover, once the Abrams Creek project is completed, Buckhorn District will be precluded from diverting when Abrams Creek flows are at or below 1.25 cfs, the total proposed ISF right flow, by the terms of the TU/District agreement. Accordingly, any claim of injury to Buckhorn's water right after the project is completed becomes moot.
2. *Minimum Flow Necessary to Preserve the Natural Environment to a Reasonable Degree.* Once the Abrams Project is completed, Buckhorn District will be precluded from diverting when Abrams Creek flows are at or below 1.25 cfs, the total proposed ISF right flow, by the terms of the TU/District agreement. Accordingly, Buckhorn's claims in this regard become moot.
3. *Depriving the People of Colorado of the Beneficial Use of Water.* Once the Abrams Project is completed, Buckhorn District will be precluded from diverting when Abrams Creek flows are at or below 1.25 cfs, the total proposed ISF right flow, by the terms of the TU/District agreement. Accordingly, Buckhorn's claims in this regard become moot.
4. *Other Matters Raised Prior to or at the Hearing.*

General description of the data to be presented to the Board

In addition to the TU/District agreement dated June 28, 2016 and related documents, TU will rely upon information presented by others, including CWCB staff, BLM, CPW and Buckhorn District.

Dated this 30th day of April, 2018.

For Trout Unlimited



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