

RULE REGARDING NOTICE OF CLAIM OF LIEN  
AND  
CHANGE OR REMOVAL OF ALLOTMENT CONTRACTS  
ISSUED BY NORTHERN WATER

April 9, 2010

The Northern Colorado Water Conservancy District (Northern Water) has adopted the following rule regarding the Notice of Claim of Lien and Change or Removal of Allotment Contracts pursuant to the Colorado Water Conservancy Act C.R.S. §§ 37-45-101 et seq. This rule supplements the existing rules, regulations, criteria and policies of Northern Water.

The following procedures are applicable to all Notices of Claim of Lien, Applications for Change of an Allotment Contract (a “Change Application”), and the Removal of Allotment Contracts (a “Removal Proceeding”).

I. CHANGE APPLICATIONS

A. Definition. A Change of an Allotment Contract is the transfer of an Allotment of Colorado-Big Thompson Project water by the Board of Directors of Northern Water pursuant to a Change Application. A Change of an Allotment Contract can only occur upon the approval of the Board of Directors (Board), and is subject to compliance with all rules, regulations, criteria, and policies of Northern Water.

B. Contents of a Change Application. A Change Application shall be in the form and contain the information required by Northern Water, including, as applicable to a Class D Allotment Contract, a complete legal description of the tract of land to which the Class D Allotment Contract is attached. Northern Water may require the amendment or correction of incomplete Change Applications.

C. Ownership. Northern Water will presume that the owner of the real property from which a Class D Allotment Contract is being changed is also the Allottee of record unless adequate evidence to the contrary is presented at or prior to the hearing. A Change Application for a Class D Allotment Contract shall be accompanied by an ownership report by a title company registered to do business in the State of Colorado, or an attorney duly licensed to practice law in the State of Colorado. The ownership report shall identify, as of the date of the Change Application, all record owners of the real property from which the Class D Allotment Contract is being transferred and all record owners of the real property to which the new Class D Allotment Contract is being reattached or transferred. The ownership report must be dated within 30 days of the Board meeting for which the Change Application is submitted. The ownership report will be updated by Northern Water with a public records check to include the period between the date of the ownership report and the close of business on the date of Board action on the Change Application, and any Change Application granted by the Board shall be contingent upon the confirmation

that the parties executing the Change Application were the Allottees of Record as of the date of the Board action on the Application.

D. Signatures. A Change Application for a Class D Allotment Contract shall be executed by all record owners of the real property from which the Class D Allotment Contract is being transferred and all record owners of the real property to which the Class D Allotment Contract is being reattached or transferred. A Change Application for Class B, Class C, and Class D Allotment Contracts shall also be signed by all valid lien holders who have filed a notice of claim of lien with Northern Water pursuant to Section III below. If the Change Application is not signed by all lien holders who have filed a notice of claim of lien with Northern Water, the Change Application may be considered and acted on by the Board at a hearing pursuant to notice as is provided for in Sections III and IV below. Northern Water reserves the right to, and may in its sole discretion, approve a Change Application without the consent of a lien holder who has filed a notice of claim of lien, after notice and hearing pursuant to the provisions of Sections III and IV below. Northern Water will not obtain or require a review of the real property records or the records kept pursuant to the Uniform Commercial Code for the purposes of identification of lien holders in connection with a Change Application, and will rely on Notices of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract filed with Northern Water pursuant to Section III below to identify lien claimants.

## II. REMOVAL PROCEEDINGS

A. Definition. A Removal of a Class B or Class C Allotment Contract is the termination of that Allotment Contract. The Removal of a Class D Allotment Contract by the Board from the lands to which it had been attached is likewise the termination of that Class D Allotment Contract. Such removal may be because of a breach or violation of the Reclamation Act, Repayment Contract, Water Conservancy Act, Water Allotment Contract, or rules, regulations, criteria and policies of Northern Water. The Removal of an Allotment Contract may occur in the absence of an Application for Allotment or Change Application.

B. Ownership of Class D Allotment Contracts. Northern Water will presume that the owner of the real property from which the Class D Allotment Contract is being removed is also the Allottee of record unless adequate evidence to the contrary is presented at or prior to the hearing pertaining to the transfer or Removal of the Allotment Contract. Northern Water will determine the ownership of the real property by obtaining an ownership and encumbrance report prepared by a title insurance company registered to do business in the State of Colorado. Northern Water will not obtain or require a review of the real property records or the records kept pursuant to the Uniform Commercial Code for the purposes of identification of lien holders in connection with any Removal Proceeding, and will rely on Notices of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract filed with Northern Water pursuant to Section III below to identify lien claimants.

### III. NOTICE OF CHANGE APPLICATIONS OR REMOVAL PROCEEDINGS

A. Notice of Change Application or Removal Proceeding in Board Agenda. Notice of a Change Application or a Removal Proceeding is provided in the agenda for the meetings of the Board of Northern Water. Agendas for monthly and special meetings of the Board shall be posted at Northern Water offices and will be sent to all parties who request that they be on the mailing or email list for the Board agendas. The Notice in the agenda shall contain the date, time, and place of the Board meeting, and the name of the Allottee of Record of the Allotment Contract which is the subject of the proposed Board action.

B. Notice of Removal Proceeding to Allottee. Notice of a Removal Proceeding will be provided by Northern Water to the Allottee of record by certified mail.

C. Notice of Change Application or Removal Proceeding to Third Parties. Northern Water will also provide notice by certified mail of a Change Application or Removal Proceeding to parties who assert a security interest in the Allotment Contract (“lien claimants”) and who file with Northern Water an executed copy of the “Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract” form required by Northern Water for each Allotment Contract for which notice of proposed actions is requested; except that Northern Water will not provide notice to lien claimants who have consented in writing to the Change Application or Removal Proceeding.

1. The Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract filed by the lien claimant with Northern Water shall include as an Attachment:

(a) A copy of a deed of trust, UCC-1, or other instrument which is executed by the Allottee of record, recorded in the real property records and/or the UCC records, and which contains the express consent of the Allottee of record to the creation of a security interest in the Allotment Contract by the party filing the Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract, or

(b) A Judgment and Decree of a court having jurisdiction which creates or recognizes a security interest in the Allotment Contract for the benefit of the party filing the Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract.

(c) A transcript of a money judgment in favor of the party filing the Notice of Claim of Lien and Request for Notification of Action regarding an Allotment Contract, entered by a court having jurisdiction.

(d) A copy of any other instrument evidencing a security interest in the Allotment Contract.

2. Because it is impossible to identify in advance all of the documents, instruments, or language which may be relied upon by lien claimants as evidence of consent by the Allottee of Record to the assertion of a security interest in the Allotment Contract, Northern Water reserves its discretion to consider the adequacy of the Attachment for the purposes of this Rule. In general, Northern Water will require that the document or instrument refer specifically to "Colorado-Big Thompson" or "C-BT" units, acre-foot units, allotments, or allotment contract(s), or have broad language which refers to and includes all water or water rights as appurtenances. A document or instrument which specifically identifies certain water rights, but does not specifically refer to Colorado-Big Thompson units, will be presumed to not include an Allotment Contract for Colorado-Big Thompson water unless satisfactory evidence to the contrary is presented to Northern Water. In the event that Northern Water determines that the Attachment does not meet the requirements of subparagraphs (a), (b), (c), or (d) above, Northern Water will notify the party filing the Notice that the Attachment is not adequate, and require that an acceptable Attachment be provided within 60 days. Northern Water may, in its sole discretion, require that the lien claimant provide written confirmation by the Allottee of record that the Allottee of record has or does consent to assertion of a security interest in the Allotment Contract by the party filing the Notice. Northern Water will provide notice of any proposed action regarding the Allotment Contract at issue during the 60 day period. If an acceptable Attachment is not provided within the 60 day period, Northern Water will reject the filed Notice, and will not provide further notice of proposed actions regarding the Allotment Contract as provided under this Rule. The acceptance of an Attachment by Northern Water is limited to its adequacy for purposes of the agreement by Northern Water to provide Notice under this Rule, and does not determine or establish the existence, validity, enforceability, or priority of the asserted lien, or create any other right of the lien claimant.

3. The Notice of Action Regarding an Allotment Contract will be mailed at least 15 days before the hearing on the Change Application or the Removal Proceeding to lien claimants who have not consented to the Change Application or Removal Proceeding and who have filed with Northern Water a Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract. The Notice of Action will be mailed to the address on file with Northern Water. A party may change the address to which such notice shall be sent by submitting written notification of the change of address to Northern Water. The Notice of Action regarding an Allotment Contract shall contain the date, time, and place of the Board meeting, the name of the Allottee of record of the Allotment Contract which is the subject of the proposed Board action at the Board meeting, and, in the case of a Class D Allotment Contract, the section, township and range of the real property to which the existing allotment has been made.

4. The Allottee of record may provide Northern Water with evidence of the release or termination of the claimed lien which formed the basis for the filing of the Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract. Northern Water will, in the event of a question regarding the release or termination of the claimed lien, request confirmation of the status of the claimed lien from the party that filed the Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract.

5. The agreement of Northern Water to provide such additional notice (a) shall not modify the procedural or substantive rights of the Allottee of record, (b) shall not create procedural or substantive rights in or for the party requesting such notice to or in any Allotment Contract(s), and (c) shall not waive, modify or limit the authority, rights and discretion of the Board and Northern Water under the Water Conservancy Act and the applicable contracts.

#### IV. HEARINGS ON CHANGE APPLICATIONS AND REMOVAL PROCEEDINGS

A. Change Applications. The Board will consider and act on a Change Application for which all signatures and consents required by Section I above have been obtained as a routine matter at a hearing held pursuant to the notice of the Change Application in the Board agenda. The Board may, in its sole discretion, consider and act upon a Change Application for which the signatures and consents required by Section I above have not been obtained at a hearing held pursuant to notice pursuant to this Section IV, regardless of whether any third party responded to or presented evidence regarding the Change Application.

B. Removal Proceedings. The Board may terminate an existing Allotment Contract and, in the case of a Class D Allotment Contract, remove the allotment from lands to which it had been attached, at a hearing held pursuant to notice to the Allottee of record, the owner of the lands to which the Allotment is attached (applicable to Class D Allotment Contract only), and all lien claimants who have filed a Notice of Claim of Lien and Request for Notification of Action Regarding an Allotment Contract pursuant to Section III above.

C. Procedure for Hearings on Change Applications and Removal Proceedings. Any interested party may submit written evidence at or prior to a hearing on a Change Application or a Removal Proceeding, and may present oral testimony at the hearing. The hearing shall be held before and by the Board. The President of the Board may act as, or may designate, a hearing officer who shall determine the order and extent of testimony and cross examination, and make any other procedural determinations necessary for a fair and efficient hearing.

D. Final Action. An Order of the Board regarding a Change Application or a Removal Proceeding shall be a final action for all purposes at the time the Board

takes action, unless stayed or made contingent upon the occurrence of a subsequent event by the Board.

#### V. RESERVATION OF AUTHORITY

An Allotment Contract for Colorado-Big Thompson Project water authorized and issued by Northern Water is created and governed by applicable provisions of the Reclamation Act, Repayment Contract, Water Conservancy Act, and the Water Allotment Contract, and is a contractual right to receive water. The Board of Northern Water reserves all authority and rights of the Board under the Water Conservancy Act, the Repayment Contract, and the Allotment Contract, including without limitation its right to determine and regulate the place and manner of use of water under an Allotment Contract.

#### VI. EFFECTIVE DATE AND RATIFICATION OF PRIOR ACTIONS

This Rule shall become effective on April 9, 2010, with respect to Change Applications and Removal Proceedings which are considered by the Board after that date.

This Rule shall also apply to all Class B and Class C Allotment Contracts for which Notices of Claim of Lien were accepted for filing by Northern Water staff prior to April 9, 2010. All prior actions of Northern Water staff accepting Notices of Claim of Lien for Class B and C Allotment Contracts are hereby ratified by the Board.