

<p>DISTRICT COURT, COUNTY OF WELD STATE OF COLORADO</p> <p>901 9<sup>th</sup> Avenue P.O. Box 2038 Greeley, Colorado 80632</p>	<p>▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF NORTHERN COLORADO WATER CONSERVANCY DISTRICT, Petitioner,</p> <p>v.</p> <p>UHRICH FAMILY LIMITED PARTNERSHIP; BENNETT L. SPAUR, JR.; GILBERT L. SPAUR; GLENN H. SPAUR; ESTATE OF BYRON SPAUR; RUBY B. SPAUR; STEVEN J. SPAUR; MARK R. SPAUR; NEW DAY/SUNRISE LLC; and PREMIER FARM CREDIT, FEDERAL LAND CREDIT ASSOCIATION, Respondents.</p>	
<p><b>Attorneys:</b> Attorneys for Northern Colorado Water Conservancy District: Bennett W. Raley, #13429 Peggy E. Montañó#11072 Trout, Raley, Montañó, Witwer &amp; Freeman, P.C. 1120 Lincoln Street, Suite 1600 Denver, CO 80203 Telephone: 303-861-1963 Fax: 303-832-4465 braley@troutlaw.com, pmontano@troutlaw.com</p>	<p>Case No. <b>2015CV031068</b></p>
<p style="text-align: center;"><b>AMENDED PETITION</b></p>	

1. The Northern Colorado Water Conservancy District (“Northern Water”) is a Water Conservancy District created by a Decree of this Court on September 20, 1937 in Case No. 9454 (attached as Exhibit A) pursuant to the Water Conservancy Act, C.R.S. §§ 37-45-101 et seq.
2. Northern Water seeks a decree of this Court that determines that the “Parking and Storage Agreement Rule” adopted by the Board of Directors of Northern Water (“Rule”, attached as Exhibit B) is a valid exercise of power and authority granted to Northern Water

pursuant to the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.* The Rule was adopted by the Board of Directors of Northern Water on August 8, 2008, after notice and a hearing.

3. This Court has jurisdiction over this matter pursuant to C.R.S. § 37-45-143. This Court also has jurisdiction over this matter pursuant to the Uniform Declaratory Judgments Act, C.R.S. §§ 13-51-101 *et seq.*, and C.R.C.P. 57.
4. The Water Conservancy Act, at C.R.S. § 37-45-143, provides in relevant part that “(1) In its discretion, the board may file a petition in the court at any time, praying for a judicial examination and determination of any power conferred or of any tax or assessment levied or of any act, proceeding, or contract of the district..., (3) The petition and notice shall be sufficient to give the court jurisdiction, and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.”
5. The Declaratory Judgments Act provides: “Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed... The declaration may be either affirmative or negative in form and effect....” C.R.S. § 13-51-105.
6. Venue is proper in this Court pursuant to C.R.S. § 37-45-143, C.R.S. § 13-51-105 and C.R.C.P. 57(a).
7. C.R.S. § 37-45-143 provides a statutorily defined process for providing notice of this Petition to all known and unknown affected parties who may be affected by the Rule. Section 143 requires that “Notice of the filing of said petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein may be examined”. Northern Water filed a Motion for Publication of the Notice of Petition when it filed the original Petition on December 15, 2015. The Motion was granted and the Notice of the Petition was published in the Greeley Tribune and the Coloradoan as required by C.R.S. § 37-45-143(1). The Proofs of Publication were filed with this court on February 23, 2016.
8. Northern Water has entered into contracts for the use of 310,000 units of Colorado-Big Thompson Project Water that may be affected by the Rule. Notice by Publication to all persons or entities who may have an interest in any contract for the use of Colorado-Big Thompson Project Water in was provided as described in Paragraph 7 above.
9. A Response to this Petition was filed by the Uhrich Family Limited Partnership, c/o Sheryl M. Uhrich, 3128 W. 11<sup>th</sup> Street, Greeley, CO 80634 prior to the hearing in this matter held on March 1, 2016. No other person or entity has filed a response or entered an appearance in this matter as of the date of this Amended Petition.

10. The following additional specifically identified persons or entities have been named as Respondents because they may claim an interest in a contract for the use of Colorado-Big Thompson Project Water that may be affected by the Rule:

- a. Mr. Bennett Spaur, Jr, 1613 Carriage Drive, Eaton, Colorado 80613.
- b. Mr. Gilbert Spaur, 8660 County Road 48 ½, Johnstown, Colorado 80534.
- c. Mr. Glenn Spaur, 1149 Brook Drive, Estes Park, Colorado 80517.
- d. Estate of Byron Spaur, c/o Ms. Ruby B. Spaur, 22605 County Road 15, Johnstown, Colorado 80534.
- e. Ms. Ruby B. Spaur, 22605 County Road 15, Johnstown, Colorado 80534.
- f. Mr. Mark R. Spaur, 9370 County Road 46 ½, Milliken, Colorado 80543.
- g. Mr. Steven J. Spaur, 3801 County Rd 46, Berthoud, Colorado 80513.
- h. New Day/Sunrise LLC, c/o Bradley Johnson, registered agent, 1132 East Highway 56, Berthoud, Colorado 80513.
- i. Premier Farm Credit, Federal Land Credit Association (John Michal-Senior Loan Officer), 229 S. 3<sup>rd</sup> Street, Sterling, Colorado.

11. C.R.S. § 37-45-143 requires that “Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding, or contract is founded and shall be verified by the president of the board.” The Rule sets forth a summary of the facts upon which the Rule is based, and is incorporated in whole as a portion of this Petition as Exhibit B. In addition, Northern Water reserves the right to introduce additional facts that are relevant to this Court’s confirmation of the validity of the Rule, including, without limitation:

- a. The Colorado-Big Thompson Project (“C-BT Project”) is a federal reclamation project that was authorized and constructed pursuant to the Reclamation Act of 1902, 32 Stat. 388, 36 Stat. 925, 43 U.S.C. 391 *et seq.*, 52 Stat. 764, 43 U.S.C. 386. Northern Water has the perpetual right to use all water from the Colorado-Big Thompson Project pursuant to a “Repayment Contract” dated July 5, 1938 between Northern Water and the United States. A copy of the Repayment Contract is attached to this Petition as Exhibit C. The Repayment Contract has been amended and supplemented subsequent to its execution in 1938.
- b. The Water Conservancy Act and Repayment Contract delegate certain powers and authority to Northern Water.
- c. Northern Water has allocated 310,000 units of Colorado-Big Thompson Water for use within the District boundaries pursuant to Allotment or other Contracts. “Class B” Allotment Contracts represent the allotment of water to a qualified petitioning municipality. C.R.S. § 37-45-123(1). “Class C” Allotment Contracts represent the allotment of water to a qualified public corporation. C.R.S. § 37-45-124(1). “Class D” Allotment Contracts represent the allotment of water to a

qualified owner of lands within the District. C.R.S. § 37-45-125(1). Northern Water also enters into contracts for the use of Colorado-Big Thompson Project water pursuant to C.R.S. § 37-45-131. A person or entity that enters into a Class B, C, or D Allotment Contract agrees “to be bound by the provisions of [the Water Conservancy Act] and the rules and regulations of the [Northern Water] board.” C.R.S. §§ 37-45-123(2)(e), 124(2)(e), and 125(2)(f).

- d. The Water Conservancy Act grants to the Northern Water Board, inter alia, the power “[t]o make and enforce all reasonable rules and regulations for the management, control, delivery and use of water,” “[t]o provide for and declare forfeitures of rights to the use of water upon default or failure to comply with any order, contract, or agreement for the purchase, lease, or use of water and to resell, lease, or otherwise dispose of water upon which forfeiture has been declared”, and “[t]o provide for and grant the right, upon terms, to transfer water from lands to which water has been allocated to other lands within the district ...”. C.R.S. §§ 37-45-134(1)(a), (c), and (e).
- e. The Rule applies to Class D Allotment Contracts. A Class D Allotment Contract is the allotment of Colorado-Big Thompson Project Water to a qualified owner of specific lands within the District. An example Class D Allotment Contract is attached as Exhibit D. The form of Class D Contracts has varied over time. Specific Class D Contracts may differ from the example included in Exhibit D.
- f. The Rule prohibits certain agreements that purport to grant control and beneficial ownership of a Class D Allotment to a person or entity other than the qualified owner of the specific lands to which the Colorado-Big Thompson Project Water was allotted by Northern Water.
- g. The Rule provides for a Grace Period for the cure of existing agreements that violate the Rule, and for the forfeiture and sale of any remaining Class D Allotment Contracts that violate the Rule subsequent to the end of the Grace Period through a public bidding process conducted by Northern Water.
- h. In the event of a forfeiture and sale of an Allotment pursuant to the Rule, the qualified owner of the Allotment Contract receives the lesser of the actual sale price of the forfeited Allotment from the public bidding process or the market value of the Allotment Contract as of the date of adoption of the Rule, less actual expenses of Northern Water incurred in the course of conducting the public bidding process.
- i. A number of Allotment Contracts that were subject to agreements that violated the Rule were cured during the Grace Period.

- j. Subsequent to the expiration of the Grace Period, a number of allotment contracts were determined to be subject to agreements that violated the Rule. These allotment contracts were determined by the Board of Directors of Northern Water to be forfeited, and were sold by Northern Water pursuant to the public bid process set forth in the Rule. The proceeds of these sales were distributed in accordance with the Rule.
- k. On July 13, 2015, Northern Water mailed a “Notice to All Class D Allotment Contract Allottees and Lien Holders” to Class D Allotment Contract Allottees and Lien Holders, a copy of which Notice is attached to this Petition as Exhibit E. This Notice was also published in certain newspapers of record. See Exhibit F. The Notice stated that “Any person may submit written comments to the Board of Directors of the Northern Water Conservancy District on the issue of whether the Board should consider modifications to the District’s Storage and Parking Agreement Rule dated August 8, 2008, which is available at: [www.NorthernWater.org/AllotteeInformation/AllotteeDocuments.aspx](http://www.NorthernWater.org/AllotteeInformation/AllotteeDocuments.aspx). Written comments must be submitted by August 4, 2015. Written comments should be sent to Northern Water, 220 Water Avenue, Berthoud, CO 80513. The Board is not, at this time, reopening the Storage and Parking Agreement Rule.”
- l. Northern Water received a response to this Notice that asserted that the Rule is invalid. A copy of this response is attached as Exhibit G.
- m. The response attached as Exhibit G does not identify specific Allotment Contracts or any specific owner of an Allotment Contract that may be affected by the Rule.
- n. The validity of the Rule may affect an unknown number of Allotment Contracts or other interested parties.

**First Claim for Relief**

(Petition for Determination of Power Conferred or Proceeding of a  
Water Conservancy District Pursuant to C.R.S. § 37-45-143)

- 12. Northern Water seeks a decree of this Court pursuant to C.R.S. § 37-45-143 that determines that the Rule is a valid exercise of Northern Water’s power and authority.

**Second Claim for Relief**

(Declaratory Judgment)

- 13. Northern Water’s rights are affected by the Rule and questions regarding the validity of the Rule. Pursuant to C.R.S. § 13-51-106 and C.R.C.P. 57, this Court has jurisdiction to enter a declaratory judgment regarding the validity of the Rule.

14. A declaratory judgment is necessary to determine the validity of the Rule and Northern Water's right and ability to enforce the Rule pursuant to its terms. A declaration of validity of the Rule will resolve any uncertainty with respect to Northern Water's authority to enforce the Rule.
15. Northern Water seeks a decree of this Court pursuant to C.R.S. § 13-51-106 and C.R.C.P. 57 that the Rule is a valid exercise of Northern Water's power and authority .

Dated this 11th day of March, 2016.

TROUT, RALEY, MONTAÑO, WITWER &  
FREEMAN, P.C.

s/ Bennett W. Raley

Bennett W. Raley, #13429

Peggy E. Montano, #11075

Attorneys for Northern Colorado Water  
Conservancy District

*Pursuant to Rule 121, a printed or printable copy of the document  
bearing the original, electronic, or scanned signature is on file in the  
Office of Trout, Raley, Montano, Witwer & Freeman, P.C.*