


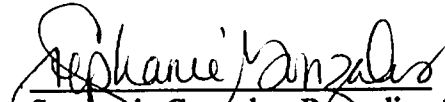
**ARKANSAS RIVER COMPACT ADMINISTRATION**

**RESOLUTION NO. 2006-05**

**DISPUTE RESOLUTION PROCEDURE**

**BE IT HEREBY RESOLVED** that in the event an issue is submitted to the Arkansas River Compact Administration (ARCA) for resolution in accordance with the Dispute Resolution Procedure set forth in APPENDIX H of the draft Judgment and Decree in *Kansas v. Colorado*, No. 105, Original, attached hereto, the ARCA agrees to make a good faith effort to resolve the issue.

  
Robin Jennison, Chairman  
Arkansas River Compact  
Administration

  
Stephanie Gonzales, Recording Secretary  
Arkansas River Compact  
Administration

Date: 12-12-06

## **APPENDIX H**

### **DISPUTE RESOLUTION PROCEDURE**

#### **I. Definitions**

**Whenever used in this Appendix, the following terms shall mean:**

**Day:** A calendar day. If the end of the designated time period, or a day specified in the applicable schedule to be used to arbitrate issues, falls on a Saturday, Sunday, or legal holiday, then the described action will be due on the next day that is not a Saturday, Sunday, or a legal holiday specified by name in Rule 6(a) the Federal Rules of Civil Procedure, and any other day appointed as a holiday by the President or Congress of the United States and all official state holidays of Kansas and Colorado.

**Engineers:** The Colorado State Engineer, Colorado Division of Water Resources, Colorado Department of Natural Resources; and the Kansas Chief Engineer, Division of Water Resources, Kansas Department of Agriculture; or comparable officials succeeding to their duties and functions.

**Fast Track Issue:** Any Non-Substantive change, as defined in Appendix B.1, part V.A, to the H-I Model; the annual determination of Compact compliance and repayment accounting as described in Appendix A; and any other issue that the States agree to designate as a Fast Track Issue.

**Federal Representative:** The representative designated by the President of the United States pursuant to Article VIII.C of the Compact who acts as chairman of the ARCA.

**Meeting:** A conference in person, by telephone, or by other means authorized by the States.

**Non-Fast Track Issue:** Any issue that is not a Fast Track Issue.

**Submitted to the ARCA:** An issue is deemed to have been Submitted to the ARCA when a written statement requesting action or decision by the ARCA has been delivered to all members of ARCA, including the Federal Representative, by a widely accepted means of communication.

## II. Fast Track Issue Resolution Procedure

If a Fast Track Issue has not been resolved informally, the following steps shall be followed, unless the States agree otherwise, if a State desires to resolve the issue:

1. The State raising the issue(s) shall give notice in writing to the other State describing the issue(s), designating the issue(s) as a Fast Track Issue, and designating the expert(s) from that State to participate in the discussions described below.
2. Within 10 days of receiving the notice described in paragraph (1), the other Engineer shall designate the expert(s) from that State to participate in the discussions. The States shall then schedule and conduct meetings of appropriate experts from each State designated by the Engineers within 30 days to attempt to resolve the issue(s). Both States shall cooperate in good faith to schedule the meetings.
3. Within 10 days of the conclusion of the 30 days for expert discussion, if the issue(s) has not been resolved, the experts shall prepare a joint written report and submit it to the Engineers. The report shall set forth the areas of agreement and disagreement among the experts. If the experts cannot agree on a joint report, each State's expert(s) shall simultaneously submit a separate report to the Engineers.
4. If the issue(s) has not been resolved, the Engineers shall hold a meeting to discuss the issue(s) within 30 days of receiving the report(s) from the experts.
5. If the Engineers do not resolve the issue(s) within 30 days of receiving the report(s), the issue may be Submitted to the ARCA within 10 days by the State raising the issue(s) if it still wants to have the issue(s) resolved. Any issue(s) Submitted to the ARCA by a State shall include a specific description of the issue(s) and supporting materials, including the written report(s) of the experts.
6. If the ARCA does not resolve the issue(s) within 30 days of its being Submitted to the ARCA, either State may submit the issue(s) to Fast Track arbitration. Arbitration shall be initiated by providing written notice to the other State and the Federal Representative. The notice shall include a brief, clear written description of the issue(s) to be arbitrated. Arbitration shall be conducted in accordance with the Rules of Arbitration set forth in Section II of this Appendix. If both States agree, the issue(s) may be submitted to Non-Fast Track arbitration.
7. The following schedule shall be used to arbitrate Fast Track Issues:

Day 1	The State raising the issue(s) to be arbitrated provides the notice set forth in Section II.6 above.
Day 7	The States mutually agree on one arbitrator for each issue.
Day 10	If they do not agree, each State will select one arbitrator.
Day 20	The two arbitrators selected by the States shall select a third arbitrator.

Day 24	If the two arbitrators fail to select a third arbitrator, the States shall each propose a candidate for the third arbitrator to the Federal Representative, who shall select the third arbitrator from the candidates proposed by the States or choose any other qualified arbitrator.
Day 24	The States shall exchange final witness lists, testimony summaries and exhibits.
Day 27	Prehearing conference.
Day 40	The States shall exchange responsive witness lists, testimony summaries, and exhibits.
Day 47	Discovery complete.
Day 53	Arbitration hearings begin.
Day 60	Arbitration hearings complete.
Day 75	Final decision(s) by arbitrator(s).

### III. Non-Fast Track Issue Resolution Procedure

If a Non-Fast Track Issue has not been resolved informally, the following steps shall be followed, unless the States agree otherwise, if a State desires to resolve the issue(s):

1. The State raising the issue(s) to be arbitrated shall give notice in writing to the other State describing the issue(s), designating it as a Non-Fast Track Issue, and designating the expert(s) from that State to participate in the discussions described below.
2. Within 10 days of receiving the notice described in paragraph (1), the other Engineer shall designate the expert(s) from that State to participate in the discussions. The States shall then schedule and conduct at least three meetings of appropriate experts from each State designated by the Engineers within 60 days to attempt to resolve the issue(s). Both States shall cooperate in good faith to schedule the meetings.
3. Within 20 days of the conclusion of the 60 days for expert discussion, if the issue(s) has not been resolved, the experts shall prepare a joint written report and submit it to the Engineers. The report shall set forth the areas of agreement and disagreement among the experts. If the experts cannot agree on a joint report, each State's expert(s) shall simultaneously submit a separate report to the Engineers.
4. If the issue(s) has not been resolved, then the Engineers shall hold a meeting to discuss the issues within 60 days of receiving the report(s) from the experts.
5. If the Engineers do not resolve the issue(s) within 60 days of receiving the report(s) from the experts, the issue may be Submitted to the ARCA within 10 days by the State raising the issue(s) if it still wants to have the issue(s) resolved. Any issue(s) Submitted to the ARCA by a State shall include a specific definition of the issue(s) and supporting materials, including the written report(s) of the experts.
6. If the ARCA does not resolve the issue(s) within 30 days of its being Submitted to the ARCA, either State may submit the issue(s) to Non-Fast Track Arbitration. Arbitration

shall be initiated by providing written notice to the other State and the Federal Representative. The notice shall include a brief, clear written description of the issue(s) to be arbitrated. Arbitration shall be conducted in accordance with the Rules of Arbitration set forth in Section VII of this Appendix.

7. The following schedule shall be used to arbitrate Non-Fast Track Issues:

Day 1	The State raising issue(s) to be arbitrated provides the notice set forth in Section III.6 above.
Day 10	The States mutually agree on one arbitrator for each issue.
Day 16	If they do not agree, each State will select one arbitrator.
Day 23	The two arbitrators selected by the States shall select a third arbitrator.
Day 30	If the two arbitrators fail to select a third arbitrator, the States shall each propose a candidate for the third arbitrator to the Federal Representative, who shall select the third arbitrator from the candidates proposed by the States or choose any other qualified arbitrator.
Day 48	The States shall exchange final witness lists, testimony summaries and exhibits.
Day 54	Prehearing conference.
Day 80	The States shall exchange responsive witness lists, testimony summaries, and exhibits.
Day 94	Discovery complete.
Day 106	Arbitration hearings begin.
Day 120	Arbitration hearings complete.
Day 150	Final decisions by arbitrator(s).

**IV. Issues Subject to Binding Arbitration.**

The States agree that if a State desires to submit any of the following issues to arbitration prior to December 31, 2016, it shall be submitted to binding arbitration: (1) all Fast Track Issues; (2) any proposal to modify reference crop values or crop coefficients for the ASCE standardized Penman-Monteith method for determining PET on the basis of data from new lysimeters to be installed at Rocky Ford; and (3) recalibration of the H-I Model based on new weather station data. The States may agree to extend the term of this section or the issues to be submitted to binding arbitration.

**V. Issues Subject to Non-Binding Arbitration.**

All issues other than those identified in Section IV shall be submitted to non-binding arbitration unless the States agree in writing to submit the issue(s) to binding arbitration.

**VI. Notice.**

**Notice or communications required or allowed by this Appendix H shall be made in writing to and from the following:**

**For Kansas: the Kansas Chief Engineer, with a copy to the Kansas Attorney General or his or her designee.**

**For Colorado: the Colorado State Engineer, with a copy to the Colorado Attorney General, or his or her designee.**