
**IN RE: NON-BINDING ARBITRATION PURSUANT TO THE FINAL
SETTLEMENT STIPULATION, *KANSAS v. NEBRASKA and COLORADO*,
NO. 126 ORIGINAL, U.S. SUPREME COURT**

BEFORE MARTHA O. PAGEL, ARBITRATOR

**ARBITRATOR'S DECISION ON
COLORADO COMPACT COMPLIANCE PIPELINE DISPUTE**

November 27, 2013

I. History of the Case

This non-binding arbitration arises pursuant to Section VII (Dispute Resolution) of the Final Settlement Stipulation (“FSS”), executed on December 15, 2002 by the States of Colorado, Kansas and Nebraska (the “States”), and approved by the United States Supreme Court. *Kansas v. Nebraska & Colorado*, 538 U.S. 720, 123 S. Ct. 1898 (2003). The FSS was negotiated among the States to resolve litigation then pending before the Supreme Court relating to groundwater use under the Republican River Compact (“Compact”).

Section VII.A.1 of the FSS provides that any matter relating to Compact administration, including administration and enforcement of the FSS, in which a State has an “Actual Interest” (as defined in Section II of the FSS), shall first be submitted to the Republican River Compact Administration (“RRCA”). Section VII.A.7 provides that if such a dispute cannot be resolved by the RRCA, and the State raising the dispute desires to proceed, the dispute shall be submitted to non-binding arbitration unless otherwise agreed to by the States with an Actual Interest.

On May 2, 2013, Colorado initiated two separate non-binding Arbitration proceedings that are currently pending before this Arbitrator. The first Arbitration concerns a revised version of Colorado’s Compact Compliance Pipeline (“CCP Arbitration”). The second arbitration concerns Colorado’s Bonny Reservoir Proposal (“Bonny Reservoir Arbitration”). As described further in a joint Arbitration Agreement, the States agreed to have the two distinct controversies heard by the same Arbitrator in contemporaneous proceedings, with separate written decisions.

The principal issue in each proceeding is whether the Colorado proposals should be approved. As described further below, for the CCP Proposal, the States agreed to three specific sub-issues; however, the States disagreed as to whether the scope of the Arbitrations should include certain additional issues requested by Kansas in letters timely filed according to FSS requirements. In a joint ruling issued August 5, 2013 the Arbitrator approved the addition of three specific sub-issues relating to the CCP Arbitration, and one additional sub-issue relating to the Bonny Reservoir Arbitration.

For the CCP Proposal, this is the third arbitration proceeding convened pursuant to the FSS. The first was conducted by Arbitrator Karl J. Dreher and was completed in mid-2009. Following briefing and hearings, Mr. Dreher issued two decisions: The Arbitrator’s Final Decision on Legal Issues, dated January 22, 2009, and the Arbitrator’s Final Decision, dated June 30, 2009.

In March, 2010, the States issued a Joint Notice of Arbitration and entered in a contract for the second arbitration proceeding with the selected Arbitrator, Martha O. Pagel, to address two issues, one relating to the CCP Proposal, and another relating to the Nebraska Crediting Issue. On May 17, 2010, the Arbitrator issued a Joint Decision on Legal Issues relating to the two issues then under review, and on July 12-14, 2010, the Arbitrator conducted a joint evidentiary hearing in Kansas City, Kansas. Separate final decisions were issued by the Arbitrator in both proceedings on October 7, 2010. Pursuant to the Arbitration Agreement for that proceeding, the final decisions included supporting analysis and recommendations.

On April 5, 2013, Colorado submitted a revised CCP Proposal to the Republican River Compact Administration (“RRCA”), requesting “fast track” review.

On May 2, 2013, the RRCA rejected the proposal, with Colorado and Nebraska voting in favor of approval, and Kansas voting against. Thereafter, Colorado initiated this third non-binding arbitration pursuant to Section VII.B and C of the FSS and the States entered into a joint Arbitration Agreement and Time Frame Designation.

On July 12, 2013, the States submitted a Stipulated Statement of Issues and briefs regarding Kansas’ Requests to Amend the Scope of the Disputes, and on July 24, the States submitted Response briefs.

On August 5, 2013, the Arbitrator issued a Combined Decision on the Scope of Arbitrations.

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On October 1-3, 2013, the Arbitrator conducted a joint evidentiary hearing in Denver, Colorado.

II. Nature of the Arbitration Proceeding

This arbitration addresses a request by Colorado for approval of the CCP Proposal. As noted, this is the third attempt by Colorado to obtain approval from the RRCA by submitting the matter to dispute resolution under the FSS, including non-binding arbitration.

The FSS does not provide specific guidance as to the nature and scope of non-binding arbitration. However, based on the experience of the States to date, and direction contained in the Arbitration Agreement entered into among the States, it appears the process has two key purposes: First, to provide findings of facts, analysis and conclusions of law that may inform further actions by the States; and second, to provide recommended remedies, as may be appropriate to help promote resolution of the issues.

The primary issue presented for consideration in this arbitration is whether the CCP Proposal should be approved. The evaluation includes three sub-issues, as described further below.

In rendering a decision on the facts and law, the Arbitrator is guided by the same standards and rules applicable to a court. In recommending a proposed remedy, the Arbitrator offers the opinion of a third-party neutral, applying general background and experience in the field of water law and administration.

This decision includes the Arbitrator’s summary of the applicable standards and law, questions presented, decision, and opinion including findings of fact and conclusions of law, and analysis and recommendations for each issue.

III. Applicable Standards/Rules of Law

The FSS provides only general guidance regarding the legal standards associated with development and approval of an augmentation plan. Section III. A of the FSS imposes a general moratorium on the construction of new wells and groundwater development, except as expressly provided in Section III. B. Section III.B.1.k provides an exception for wells associated with an “augmentation plan” to offset stream depletions:

“Wells acquired or constructed by a State for the sole purpose of offsetting stream depletions in order to comply with its Compact Allocations. Provided that, such Wells shall not cause any new net depletion to stream flow either annually or long-term. The determination of net depletions from these Wells will be computed by the RRCA Groundwater Model and included in the State’s Computed Beneficial Consumptive Use. Augmentation plans and related accounting procedures submitted under this Subsection III.B.1.k. shall be approved by the RRCA prior to implementation.”

The term “augmentation plans” is not further defined in the FSS, however Section IV.H provides additional direction regarding the determination of “augmentation credit” as part of an augmentation plan:

“Augmentation credit, as further described in Subsection III.B.1.k, shall be calculated in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.”

Under the terms of the Compact, decisions by the RRCA, as the administering body of the Compact, must be unanimous and consistent with the provisions of the Compact. (Compact, Article IX.)

A key legal question presented in all three of the CCP Arbitrations is whether each of the States, as a member of the RRCA, is bound to a standard of reasonableness in exercising its discretion under the FSS. For this proceeding, as in the second Arbitration, it is determined that the States are obligated to act reasonably, and in good faith, in fulfilling such obligations. (*See*, Arbitrator’s Final Decision, CCP Dispute, October 7, 2010, p.4.) These obligations arise under general principles of contract law applicable to stipulated agreements such as the FSS. As noted in the 2010 Decision, the U.S. Supreme Court has determined the terms of an interState compact are not subject to these same general rules because of the unique character of a compact as not only an agreement among the affected States, but also as a federal statute enacted by Congress. *See, Alabama v. North Carolina*, 130 S. Ct. 2295, 2212-2213, 176 L. Ed. 2d 1070 (2010). In contrast, the FSS is a stipulated consent decree, separately negotiated by the three States and not enacted into federal or State law. As such, it is an agreement subject to general principles of contract law. *United States v. ITT Cont’l Baking Co.*, 420 U.S. 223, 236 (1975). General principles of contract law include an implied duty of good faith and fair dealing. Restatement (Second) of Contracts §205 (1981); *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d 139, 158 (E.D. N.Y., 2000). Further, when a contract includes provisions for approval by the parties, such as Section IV.B.1.k of the FSS relating to augmentation plans, the parties must exercise discretion reasonably, and may not do so arbitrarily, capriciously, or in a manner

inconsistent with the reasonable expectations of the parties.” *Behara v. Baxter Health Care*, 956 F.2d 1436, 1443 (7th Cir. 1992).

In its Post-Hearing Brief Kansas objects to the prior decision on this issue, arguing that the Compact itself – not the FSS – establishes the requirement for unanimous decision-making, and that nothing in the FSS can override that provision or impose additional requirements on the decision-making process. (Kan. Brief, p. 5-7.) Kansas also re-asserts arguments that neither the Arbitrator nor the Supreme Court has authority to revise or override the Compact requirement for unanimous approval. (*Id.*)

As a separate legal issue, Kansas provides argument in support of its own ability – under a reasonableness standard for implementation of FSS requirements – to rely on expert testimony developed during the arbitration proceeding to further explain and inform its position regarding the CCP proposal. (*Id.*, at 8-10.) This argument is persuasive. The issue was raised in response to Colorado’s attempt to exclude certain evidence during the hearing on the basis that it was not available to Kansas at the time of the RRCA decision on the revised CCP Proposal, and therefore not relevant to an assessment of whether the Kansas vote was “reasonable.” Kansas is correct in asserting that basic principles of litigation allow parties to engage experts to further support and assist in the advocacy process. Additionally, the nature of the “fast track” process itself suggests a need for States to act quickly on the basis of the information and analysis that can be reasonably accomplished within a 30-day period. Accordingly, Kansas is entitled to rely on its expert witnesses and evidence to further support and defend its position.

IV. Summary of Decision

The revised CCP Proposal makes significant progress in addressing unresolved issues from the prior arbitration proceeding; however, it is not unreasonable for Kansas to reassert certain prior concerns regarding the method of calculating the augmentation credit.

The revised CCP Proposal does comply with FSS requirements by calculating augmentation credit in accordance with the RRCA Accounting Procedures and by using the Groundwater Model, but that, alone does not mandate approval of the overall plan. Similarly, if the CCP Proposal were approved, it would be consistent with the provisions of Subsection IV B. of the FSS pertaining to the use of excess waters, but Kansas asserts the revised proposal still does not address related policy issues raised in the prior arbitration proceeding.

The objections raised by Kansas are not unreasonable. As a result, Colorado is not entitled to a ruling that the CCP Proposal must be approved as a matter of law.

The decision is in favor of Kansas and against Colorado and Nebraska.

V. Opinion

A. Overview of the Proposal

This is the third Arbitration proceeding relating to a request by Colorado for approval of an “augmentation plan” as permitted under the FSS. The revised CCP Proposal currently under review specifically addresses eight issues or objections raised in the connection with the second

CCP Arbitration proceeding. (J-1, pp. 12-18.) Five of the eight issues previously raised were resolved by Kansas and Colorado under a Stipulation signed September 26, 2013 and entered into the record of this proceeding.

The overall concept of the CCP Proposal is to provide replacement, or “augmentation” water to mitigate for the impacts of historical groundwater use within Colorado that has led to on-going non-compliance with allocations under the Compact. Because of historical overuse, and the lagged effect of groundwater pumping on surface water, Colorado would be unable to attain compliance with Compact Allocations without an augmentation program. As a result, the States generally agree some form of CCP augmentation plan is needed. (See, J-1, Ex. A.)

The CCP Plan consists of fifteen well sites, a collector pipeline, a storage tank, and a main transmission pipeline. The system would be managed by the Republican River Water Conservation District (“RRWCD”), an entity authorized by Colorado law to assist the State in carrying out its duty “to comply with the limitations and duties imposed upon the State by the Republican River Compact. (See, J-1, Ex. 1.)

Water rights associated with the pipeline were purchased by the RRCWD in 2009. The groundwater rights are located within the North Fork Sub-basin and have an aggregate annual appropriation of 23,391 acre-feet, and aggregate historical consumptive use of approximately 13,000 acre-feet per year. (*Id.*) Under the CCP Plan, the water rights that were historically used for irrigation purposes would be converted to augmentation flow and consolidated into eight wells that would be used to pump groundwater from the Ogallala aquifer to the North Fork of the Republican River. An additional seven existing wells will serve as alternate points of diversion that may be brought into production in the future if needed; however, the pumping of groundwater for the CCP will be limited to the historic consumptive use of the wells for past irrigation. Groundwater pumped by the CCP wells will be delivered through collective pipelines to a storage tank and then by a main pipeline to the North Fork of the Republican River, at a location a short distance upstream from a stream flow gage at the Colorado-Nebraska State line. (*Id.*)

The CCP Proposal includes a process for estimating the annual Project Delivery, including a minimum annual delivery of 4,000 acre-feet; however deliveries are limited by the historical consumptive use of the groundwater rights acquired for the CCP. (*Id.*)

The CCP Proposal includes provisions for banking of groundwater; but the banking reserve would not override the provisions for calculating the Projected Delivery or minimum annual delivery of 4,000 acre-feet. Under the Proposal, the CCP banking reserve would be limited to 30,996 acre-feet, an amount equal to three times the difference between the maximum annual permitted appropriation and the average annual historical withdrawal (23,391 ac/ft – 13,059 ac/ft x 3.) (*Id.* at 21.)

Colorado proposes it should be given 100% credit for CCP deliveries as an offset to stream depletions to the North Fork of the Republican River, provided the deliveries are in compliance with other terms and conditions, and that the CCP deliveries be included in all runs of the RRCA Model (including the “Colorado Pumping” and the “No Colorado Pumping” runs used to determine stream depletions.) (*Id.* at 26.) Augmentation deliveries will be credited only

against stream depletions in the North Fork Sub-basin and will not be credited against stream depletions in the South Fork in Table 4A of the RRCA Accounting Procedures, for purposes of determining Colorado compliance with the Sub-basin non-impairment requirement. (*Id.* at 26-27.)

B. Disputed Issues

The States have made great progress toward reaching agreement on the policies and procedures to be included in the augmentation plan. Three key sub-issues remain, and are addressed below, along with further discussion of the principal issue as to whether the CCP Proposal should be approved.

1. Whether the CCP Proposal calculates Augmentation Credit in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model as described in Subsections II.B.1.k and IV.H. of the Final Settlement Stipulation (the “FSS”).

Ultimate Findings and Conclusions

The augmentation plan described in the CCP Proposal utilizes the Groundwater Model to calculate the Augmentation Credit, and proposes related changes to the RRCA Accounting Procedures. Therefore, if approved, the Proposal would be consistent with the requirement that the Augmentation Credit be calculated in accordance with the RRCA Accounting Procedures and by using the Groundwater Model, as required under the FSS.

Analysis and Recommendations

Under the FSS the amount of “augmentation credit” is to be calculated “in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.” FSS, IV.H. The Arbitrator’s Decision in the 2010 proceeding concluded the CCP Proposal under consideration at that time did not adequately utilize the Groundwater Model. (J-15, p. 8.) Subsequently, Colorado made changes to the Proposal to specifically include use of the Groundwater Model for purposes of calculating the augmentation credit, and to make related changes in the RRCA Accounting Procedures. (*See*, J-1, revised CCP Proposal.) Under the revised Proposal, augmentation flows are included in all runs of the model. (*Id.* at 13.) And, as noted by Colorado, Kansas admits that the CCP Proposal uses the Groundwater Model to calculate the augmentation credit. (Tr. Vol 2, p. 143:18-22 (Book).) Accordingly, it must be determined that the CCP Proposal, on its face, meets the specified requirement of the FSS.

However, as evidenced by the extensive briefing of this issue, the inquiry for purposes of addressing the underlying issue of whether the CCP Proposal should be approved does not end there. The states agree there are several ways the Model can be used to calculate the augmentation credit. (*Id.*, at p. 144:19 – 145:8.) Kansas contends the approach selected by Colorado still does not adequately reflect the negative pumping effects that were the subject of dispute in previous arbitration proceedings. Colorado asserts the specific approach it has proposed is based on suggestions received directly from Kansas. (C-3, p. 12.) Kansas disputes that contention (K-11, p. 18.) and the conflicting evidence on this issue does not indicate Kansas has previously agreed to the approach now offered. Colorado also notes it evaluated two

alternatives that were suggested by the Arbitrator in the prior decision, and picked one. (Colo. Brief, p. 34-35.) But that argument fails to recognize that the options offered in the prior decision were merely recommendations. (J-15, at p. 11.) Pursuant to the nature of non-binding arbitration, Kansas is not obligated to accept those options over other potential approaches.

Kansas asserts the Colorado's proposed use of the Model fails to adequately account for the impacts of the groundwater pumping that is necessary to produce the augmentation flow in the first place. Colorado contends by including the augmentation flows in all runs of the Model, the CCP Proposal treats augmentation flows like all other baseflow appropriately accounts for impacts. (C-3, p. 9-10; C-2, p. 1). As a bottom line, under Colorado's approach, the final amount of augmentation credit would appear to be in the range of about 94% of the measured augmentation flow, but the amount would vary from year to year. (C-3, p. 9). Under alternatives Kansas has identified, the amount of credit would likely be around 88.5%, on average. (K-10, p.7.) In both instances, the Groundwater Model would be used to calculate the amount of augmentation credit.

As in the previous arbitration, the record shows a battle of the experts that cannot be resolved with a reasonableness test. This is not a question of which expert is more persuasive than the other based on a preponderance of the evidence or other measure as to the burden of proof. Applying the principles of contract law to the FSS obligations of the parties, a court would be loath to substitute one State's judgment for another to require a change in the *status quo*. Because Colorado seeks a change by implementing an augmentation plan, it must continue to seek unanimous approval of the details of the plan so long as there are reasonable points of disagreement.

It is true that the prior decision observed there could come a point in time when Kansas' refusal to approve the plan could reach the point of being unreasonable, but that point has not yet been reached. In this proceeding, Kansas states for the record that it would accept an impact run alternative: "If Colorado were to accept one of these methods, then this issue would be resolved." (Kan. Brief, p. 20, citing to Tr. Vol. 2, 173:24-174:6 (Barfield Testimony.)) Although Colorado is not required to accept the offer, its existence in the record at least confirms the issues have been substantially narrowed and suggests a goalpost for future reference.

2. Whether the CCP Proposal is consistent with Subsection IV.B. of the FSS.

Ultimate Findings and Conclusions

If approved as submitted, the CCP Proposal would be consistent with Subsection IV.B. of the FFS relating to the manner in which a State may gain access to "excess" water that may be available in given Sub-basin..

Analysis and Recommendations

Subsection IV.B. of the FSS provides:

- B. Water derived from Sub-basins in excess of a State's specific Sub-basin Allocations is available for use by each of the States to the extent that:

1. such water is physically available;
2. use of such water does not impair the ability of another State to use its Sub-basin Allocation within the same Sub-basin;
3. use of such water does not cause the State using such water to exceed its total Statewide Allocation; and
4. if Water-Short Year Administration is in effect, such use is consistent with the requirements of Subsection V.5.

Colorado asserts the CCP Proposal “meets all of the requirements of Section IV.B and satisfies the intent of the parties in negotiating the flexibility to use the unallocated supply.” (Colo. Brief, p. 38.) Kansas argues the FSS does not contemplate a scenario by which a State may use augmentation to over-compensate or “bank” water in one Sub-basin in order to reach statewide compliance, and thereby gain access to excess water in another Sub-basin. (Kan. Brief, p. 23-30.) Nebraska generally supports Colorado and argues it is unreasonable for Kansas to continue to withhold its approval. (Neb. Brief, p. 5-8.) Kansas seeks further operational limits to clarify that augmentation credit is limited to replacement of overuse in the North Fork Sub-basin, and cannot be used to offset use of unallocated, excess water that may be available in the South Fork Sub-basin.

The same issue was raised in the second CCP Arbitration. (J-15, at pp.11-13.) The Arbitrator’s Final Decision in that proceeding concluded:

The CCP Proposal is not intended to allow Colorado to replace South Fork overuse with augmentation flow delivered to the North Fork for purposes of determining Compact compliance with Sub-basin allocations; however, the intention should be more clearly reflected in the Proposal and related modifications to the RRCA Accounting Procedures. The CCP Proposal would allow for use of North Fork augmentation in computing Colorado’s Statewide compliance; however, Kansas raises a legitimate policy question as to whether an augmentation plan may be used to artificially create a surplus in one Sub-basin in order to meet the Statewide compliance test. Therefore, it was not unreasonable for Kansas to withhold its consent to the CCP Proposal on this basis.

(Id. at 11.)

The revised CCP Proposal clarifies Colorado’s intentions with respect to the Sub-basin impairment test, but does not address the additional policy issue regarding the Statewide compliance test.

In the prior proceeding it was recognized that the States generally agreed Section IV.B. of the FSS allows a State access to the unallocated water in one Sub-basin so long as the State under-uses its allocation in another basin such that the State does not exceed its total Statewide Allocation. The States do not agree on what happens if that scenario is reversed. Here, instead of under-using its Allocation in one Sub-basin to allow access to unallocated water in another Sub-basin, Colorado is currently exceeding its Statewide Allocation on a regular basis in both the North Fork and South Fork (and under the statewide test), but proposes to use the augmentation

program to help maintain statewide compliance. Kansas argues this will result in harm to Kansas by creating an incentive for Colorado to “over-deliver” pipeline water into the North Fork Sub-basin in order to build a surplus, and a disincentive for Colorado to implement separate compliance measures in the South Fork Sub-basin. Colorado responds that limitations in the pipeline system itself will prevent substantial over-deliveries. (C-2, p. 3.) (Additionally, it should be noted that Colorado’s Bonny Reservoir Proposal intended to address compliance in the South Fork Sub-basin. For purposes of this analysis, some level of over-use in the South Fork Sub-basin is assumed. If Colorado is not out-of-compliance in that Sub-basin, the issue may become moot.)

With respect to the broader policy question, Colorado argues the CCP Proposal rightfully allows it to replace depletions on the North Fork in order to achieve statewide compliance, so long as it is not using Kansas’ specific Allocation on the South Fork. That, in turn, allows Colorado to utilize the unallocated supply on the South Fork. (Colo. Brief at 38.) Colorado contends this type of flexibility is what the States contemplated when they negotiated Subsection IV of the FSS. (*Id.*) The argument is supported by a plain reading of Section VI.B., which on its face indicates a State may be out-of-compliance within a Sub-basin and still gain access to available unallocated water within that same Sub-basin, so long as use of the excess water does not cause the State to exceed its own Statewide allocation or to impair another State’s allocation within the Sub-basin. In that sense, Colorado’s proposal would be consistent with IV.B. However, in this case, because of Colorado’s existing over-use in both the South Fork and North Fork Sub-basins, use of the unallocated excess water in the South Fork Sub-basin would cause Colorado to be out-of-compliance unless it was offset by underuse in another Sub-basin or by credits from the augmentation program. Since Colorado is relying on the augmentation plan to provide the required offset, the door is open for further consideration of the policy questions Kansas has raised. It is not unreasonable for Kansas to take the position that the amount of augmentation water provided – and the credit awarded – be reasonably tied to the amount of over-use in the North Fork Sub-basin.

3. Whether the CCP Proposal includes adequate operational limits.

Ultimate Findings and Conclusions

The CCP Proposal includes adequate operational limits to implement the plan, as proposed. However, an ultimate determination as to the adequacy of the limits is necessarily tied to the outcome of the other sub-issues presented for arbitration.

Analysis and Recommendations:

Kansas asserts the revised CCP Proposal lacks adequate operational limits. Specifically, as described above, Kansas argues the CCP Proposal does not contain sufficient clarity to ensure that the augmentation deliveries are reasonably tied to North Fork overuse. Kansas seeks clearer language in the CCP Proposal committing to how the deliveries will be computed and limited. As described above, without these operational limits, Kansas expresses concern that Colorado could use the augmentation water to over deliver in the North Fork as a means of offsetting over-use in the South Fork Sub-basin. Additionally, Kansas notes a discrepancy in the proposed changes to the Accounting Procedures, arguing the markup provided with the CCP Proposal do

not adequately implement proposed changes to the Model runs. (Kan. Post-Hearing Brief at 24-26.)

Colorado responds that the Proposal does contain sufficient operational limits; specifically, that the Proposal appropriately provides for augmentation credits to offset both stream depletions on the North Fork and use of the unallocated supply on the South Fork. Colorado also contends the FSS does not prescribe operational limits or require a particular level of detail, arguing the level of detail provided in the Proposal is sufficient.

The question of adequacy of operational limits is necessarily tied to the outcome of policy decisions raised by the sub-issues addressed above. Until the current disagreements over substantive provisions of the augmentation plan are resolved, the necessary operational limits are unknown.

Dated: November 27, 2013



Martha O. Pagel
Arbitrator

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CERTIFICATE OF SERVICE

I hereby certify that on 27th day of November, 2013, I served a copy of the foregoing **ARBITRATOR'S JOINT DECISION OF LEGAL ISSUES** by e-mail and by sending a true and correct copy thereof by overnight courier on:

Scott Steinbrecher
Colorado Department of Law
Ralph Carr Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
Scott.Steinbrecher@State.co.us

Christopher M. Grunewald
Kansas Attorney General's Office
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612
Chris.Grunewald@ksag.org

Burke W. Griggs
Burke.Griggs@ksag.org

Justin D. Lavene
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509
Justin.Lavene@nebraska.gov

Don G. Blankenau
don@aqualawyers.com



Martha O. Pagel