



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

IN REPLY REFER TO:

GP-4100
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May 15, 2012



RETURN RECEIPT REQUESTED

Mr. Justin D. Lavene
Assistant Attorney General
P.O. Box 98920
Lincoln, NE 68509-8920

Subject: Final Response Regarding Your May 3, 2012, Touhy Request for Supplemental Deposition in *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court

Dear Mr. Lavene:

This letter is in response to the May 3, 2012, Touhy Request for Mr. Aaron Thompson to appear at a "Supplemental Deposition" on May 21, 2012, from 1:30 p.m. to 5:30 p.m., in the Nebraska Attorney General's Office, located at 1221 N. Street, Suite 601, Lincoln, Nebraska regarding *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court. You stated the reason for this supplemental deposition is necessitated by the supplemental disclosure of approximately 2,000 documents that were made available on April 26, 2012, and the Special Master granted your motion to re-depose Mr. Thompson.

The justification for this request was set forth in the September 1, 2011, Touhy Request which the State of Kansas sent on behalf of itself, and the State of Nebraska requesting Mr. Thompson's testimony and the production of documents. To date, the Bureau Reclamation has produced and provided all the documents to the States through Mr. Jim DuBois at the U.S. Department of Justice.

The September 1, 2011, Touhy Request, which you incorporated by reference, requested Mr. Thompson, Reclamation's Nebraska Kansas Area Office Manager, to provide deposition testimony as part of discovery in *Kansas v. Nebraska & Colorado*, Original 126, United States Supreme Court.

Specifically:

1. "The testimony of Mr. Aaron Thompson, Area Manager: In accordance with 43 C.F.R. 2.84(e), Nebraska submits that Mr. Thompson's testimony is required because Mr. Thompson has unique and personal knowledge of events leading to Reclamation's critique of Nebraska's Integrated Management Plans, including the scope of analyses conducted to support that critique. In addition, Nebraska expects Mr. Thompson will be able to provide:
 - a. An explanation of how record adjustments are made after Nebraska Bostwick Irrigation District and Kansas Bostwick Irrigation District submit irrigation information to Reclamation.
 - b. An explanation of how Reclamation verifies the amount of water actually delivered to producers.

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- c. An explanation of the process by which Reclamation uses actual gaged flows to derive the diversion numbers for the Courtland Canal reported in Table 2 of Reclamation’s Annual Operating Plan, including a discussion of how canal losses enter into these calculations.

No record can be provided and used in lieu of Mr. Thompson’s testimony.

Concerning Integrated Management Plans (IMP), Mr. Thompson is authorized to testify regarding historical information regarding the IMPs, including what information Reclamation had at the time of providing testimony for each IMP. He may testify as to how Reclamation arrived at its decision concerning testimony for each IMP.

Concerning record adjustments, Mr. Thompson may testify as to how Reclamation adjusts records based on information provided by Nebraska and Kansas Bostwick Irrigation Districts.

Concerning verification of water deliveries, Mr. Thompson may testify and provide an explanation of how Reclamation verifies the amount of water actually delivered to producers.

Concerning diversion numbers for the Courtland Canal, Mr. Thompson may testify and provide an explanation of the process by which Reclamation uses actual gauged flows to derive the diversion numbers for the Courtland Canal reported in Table 2 of Reclamation’s Annual Operating Plan, including a discussion of how canal losses enter into these calculations.

Mr. Thompson is not authorized to testify to matters outside of your specific requests.

In accordance with 43 C.F.R. § 2.85, you stated your willingness to pay the costs associated with Mr. Thompson’s time, and any record production costs. FOIA regulations may be viewed at www.doi.gov.

Please feel free to contact Mr. Thompson via email at AThompson@usbr.gov), Mr. Chaffin at John.Chaffin@sol.doi.gov, or Ms. Hirning at DHirning@usbr.gov regarding this Touhy Request.

Sincerely,

/s/
Michael J. Ryan
Regional Director

cc: Mr. John B. Draper
Counsel of Record
Montgomery & Andrews, PA
PO Box 2307
Santa Fe, NM 87504-2307

Mr. Tom Wilmoth
Blankenau Wilmoth LLP
206 South 13th Street, Suite 1425
Lincoln, NE 68508

Mr. Peter J. Ampe
First Assistant Attorney General
Federal & Interstate Water Unit
Natural Resources & Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203

Mr. James DuBois
U.S. Department of Justice
Environment and Natural Resources Division
999 18th Street
South Terrace, Suite 370
Denver, CO 80202

bc: DOI – Office of the Solicitor
Attn: Mr. Matthew Parsons
(via electronic mail)

GP-1000, GP-1154, GP-4000, GP-4600 (Erger, Guenther),
GP-5600 (Chastain) NK-100 (Thompson), NK-410 (Scott)

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