



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
LAW-5.10

APR - 6 2012

RETURN RECEIPT REQUESTED

Mr. Justin D. Lavene
Assistant Attorney General
State of Nebraska
1445 K Street
Lincoln NE 68508-2731

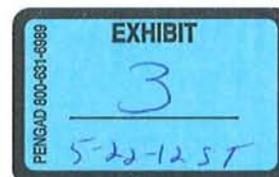
Subject: Touhy Request and Amended Testimony of Mr. Marvin Swanda, and Subpoena
Duces Tecum in *Kansas v. Nebraska & Colorado*, No. 126, Original, U.S. Supreme
Court, Letters Dated: March, 30, 2012

Dear Mr. Lavene:

The Bureau of Reclamation, as well as the Department of the Interior Solicitor's Office, and the Department of Justice received your Touhy Request, and Subpoena regarding No. 126, Original, U.S. Supreme Court. As requested in your letter, we continue expeditious efforts to make the information and testimony you have requested available within time limits imposed by the ongoing interstate litigation, while also ensuring compliance with the Department's regulations.

The State of Nebraska served Mr. Swanda a *Subpoena Duces Tecum* on March 22, 2012, and in accordance with 43 CFR §2.83, the Bureau of Reclamation received an electronic copy of the required Touhy Request at 7:40pm (CDT), Friday, March 30, 2012. Due to the short time available for review of the request, authorization for testimony could not be obtained prior to the date scheduled for the deposition. In accordance with 18 USC §207, Mr. Swanda did not testify at the April 03, 2012, scheduled deposition in Lincoln, Nebraska.

The March 30, 2012, Touhy Request from the State of Kansas, which you incorporated into your Touhy Request, states: "Mr. Swanda's testimony is not reasonably available from any other source. Mr. Swanda, as a former long-time Reclamation employee, possesses knowledge of the historical operations of the Reclamation projects in the Republican River Basin ("RRB") that no other single person possesses. Mr. Swanda will be able to testify to facts of which he has personal knowledge during the period of his employment. Specifically, Mr. Swanda's testimony would consist of the following subjects if this Touhy Request is approved, each subject limited to the knowledge he gained during the time of his employment at Reclamation.



1. Documents of the initiation and operations of the RRB Reclamation projects.
2. Concerns of Reclamation regarding groundwater use above Reclamation projects and how those concerns were documented.
3. Concerns of Reclamation regarding Nebraska's Integrated Management Plans and how these concerns were documented."

I am granting your request for Mr. Swanda's testimony subject to the following limitations:

- 1) Mr. Swanda is authorized to provide testimony based on his personal knowledge, gained during the time of his employment at Reclamation and relating to:
 - a) Documents of the initiation and operations of the RRB Reclamation projects.
 - b) Document concerns of Reclamation regarding groundwater use above Reclamation projects based on his own personal experience.
 - c) Document concerns of Reclamation regarding Nebraska's Integrated Management Plans up to the time of his retirement from Reclamation which was December 31, 2010.
- 2) Mr. Swanda may offer lay opinions or inferences rationally based on Mr. Swanda's own perceptions and not based on scientific, technical, or other specialized knowledge within scope of Rule 702. Rule 701, FRE.
- 3) Mr. Swanda is not authorized to offer expert testimony including testimony in the form of opinion or otherwise based on scientific, technical, or other specialized knowledge related to his work for Reclamation.
- 4) Because he is not authorized to offer expert testimony, Mr. Swanda may not answer hypothetical questions based on information presented at or before the hearing or deposition, including facts not within his personal knowledge.
- 5) Mr. Swanda is not authorized to testify as to matters or actions of Reclamation arising after his separation from Reclamation.
- 6) Mr. Swanda is not authorized to testify to official policies of Reclamation or to any interpretations of law by Reclamation, the Office of the Solicitor or the Secretary of the Interior.

Mr. Swanda, as a former employee, does not possess any documents responsive to the Subpoena Duces Tecum.

When Reclamation receives a copy of Mr. Swanda's updated subpoena, we will advise him of this approval, and the parameters of his authorization to testify.

In accordance with 43 C.F.R. § 2.85, you stated your willingness to pay the applicable fees, if approval to your Touhy Request regarding Mr. Swanda was granted. Since Mr. Swanda is a retired employee, the costs associated with his travel and related expenses will need to be coordinated directly with him.

Please feel free to contact Mr. Aaron Thompson (AThompson@usbr.gov), Donna Hirning (DHirning@usbr.gov), or John Chaffin (John.Chaffin@sol.doi.gov) regarding this Touhy Request.

Thank you for your courtesy and cooperation in this matter.

Sincerely,



Michael J. Ryan
Regional Director

cc: Mr. John Draper
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