



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

May 15, 2012

RETURN RECEIPT REQUESTED

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

Subject: Final Response to Your May 3, 2012, Touhy Request and Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum in *Kansas v. Nebraska*, No. 126, Original

Dear Mr. Lavene:

On May 3, 2012, Department of the Interior Field Office Solicitor, Mr. John Chaffin, forwarded to the Bureau of Reclamation, Great Plains Region, an electronic copy of the State of Nebraska's supplemental *Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum and Touhy Request*.

The State of Nebraska served Mr. Swanda, by United States Postal Service - In Care Of, Mr. Chaffin, a Subpoena Duces Tecum on May 3 2012. Your letter states Mr. Swanda's deposition is scheduled for May 22, 2012, from 8:00 a.m. to 5:00 p.m., in the Nebraska Attorney General's Office, located at 1221 N. Street, Suite 601, Lincoln, Nebraska.

The scope of this Touhy Request is the same as your March 30, 2012, Touhy Request which you have incorporated by reference and which states: "The State of Nebraska respectfully requests that Mr. Marvin Swanda appear for deposition and provide the testimony, documents and information specified in Kansas' Touhy Request dated March 30, 2012, for use in the above -referenced litigation." You also documented: "On Motion, Nebraska requested leave to depose Mr. Swanda out of time, and that motion was granted by the Special Master by Order of April 26, 2012."

The State of Kansas' March 30, 2012, Touhy Request stated: "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.

We have advised Mr. Swanda 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 associated with Mr. Swanda's testimony. Since Mr. Swanda is a retired employee, the costs associated with his travel and related expenses will need to be coordinated directly with him. FOIA regulations may be viewed at www.doi.gov.

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

Sincerely,

/s/
Michael J. Ryan
Regional Director

cc: Mr. John Draper
Counsel of Record, State of Kansas
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Santa Fe, NM 87501

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(via electronic copy only)

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

GP-1000, GP-1154, GP-4100 (Hirning), GP-4600 (Erger, Guentner), GP-5600 (Chastain)
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