



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
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Billings, MT 59107-6900

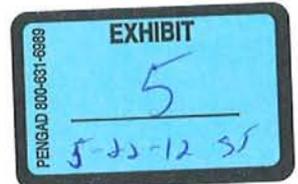
IN REPLY REFER TO:

GP-4100
LAW-5.10

May 15, 2012

RETURN RECEIPT REQUESTED

Mr. John B. Draper
Counsel for Kansas
Montgomery and Andrews
325 Paseo de Peralta
Santa Fe, NM 87501



Subject: Touhy Requests, Dated March 23, 2012, March 30, 2012, and April 1, 2012, Regarding Mr. Marvin Swanda's Deposition and Subpoena Duces Tecum; and the Amended Touhy Request for Mr. Aaron Thompson's Testimony in *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court

Dear Mr. Draper:

The Bureau of Reclamation, Great Plains Region, received your April 1, 2012, Touhy Request in which you provided the trial dates of August 8-31, 2012, for *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court. You also requested approval to work with the Nebraska Kansas Area Manager, Mr. Thompson, to finalize the proposed written testimony which will be submitted as his direct testimony at the trial.

Reclamation has reviewed your Touhy Requests including those dated March 23, 2012, and March 30, 2012. In addition, there has been extensive electronic communications between the States of Kansas and Nebraska Counsels of Record, with the Federal government's counsel (Mr. James DuBois Esq., and Mr. John Chaffin Esq.) and Mr. Thompson. The government counsel has actively demonstrated Reclamation's willingness to work with the States regarding *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court, in order to meet the Summary of Deadlines, dated October 14, 2011.

Mr. Swanda, as a non-expert witness, will be able to testify to the facts of which he has personal knowledge during the period of his employment. I have enclosed a copy of the Touhy Request response dated April 6, 2012, regarding Mr. Swanda's Subpoena Duces Tecum that states the subjects and limitations of his testimony that he will be provided at the scheduled deposition on May 22, 2012, in Lincoln, Nebraska. These same limitations will apply to Mr. Swanda as a testifying witness if he is called, and any written testimony must also be within these limitations.

Reclamation is willing to work with the State of Kansas regarding both Mr. Thompson's and Mr. Swanda's written testimonies in order to assure that the proposed testimonies are consistent with the limitations of their Touhy Authorization. Reclamation will need to have the written testimony prepared no later than 30 work days prior to the deadline set by the Special Master in order to ensure adequate internal review is completed in time. In accordance with 43 CFR §2.85, and as you affirmed in your willingness to pay statement, the State of Kansas will pay all costs, including travel expenses for the employee to testify under the relevant substantive and procedural laws and regulations. Please note, payment regarding Mr. Swanda's travel and related fees must be coordinated directly with Mr. Swanda.

In closing, Reclamation will continue to work with you to ensure we are all in compliance with the applicable Code of Federal Regulations (43 CFR §§2.80 – 2.90) which governs Touhy Requests.

Freedom of Information Act Regulations may be viewed at: www.doi.gov.

If you have any questions, please feel free to contact Mr. Thompson via email at AThompson@DOI.gov or at 308-389-5301, Donna Hirning at DHirning@usbr.gov or at 406-247-7713 or John Chaffin at John.Chaffin@sol.doi.gov or at 406-247-7058.

Sincerely,

/s/
Michael J. Ryan
Regional Director

Enclosure

cc: Mr. Justin D. Lavene
Assistant Attorney General
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1445 K Street
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Mr. Marvin Swanda
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Ms. Autumn Bernhard
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Mr. James J. DuBois
U.S. Department of Justice
999 18th Street
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Denver, CO 80202
(via electronic mail only)

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

GP-1000, GP-1154, GP-4600 (Erger, Guenther), GP-5600 (Chastain),
NK-100, NK-200, NK-410 (Scott)
(w/ enclosure to ea)

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Draper March and April Touhy Requests re Mirrs Thompson and Swanda depositions and test 5 14 12 H.docx