

Steven Jones
Wyoming Outdoor Council
262 Lincoln Street
Lander, Wyoming 82520

Response

Re: Touhy Request (Re. Wyoming Docket No. 06-3804)

Dear Mr. Jones:

This is in response to your Touhy Request to obtain (1) the testimony of Brain Kelly and Kim Dickerson, employees of the U.S. Fish and Wildlife Service-Region 6 (Service), in the above-referenced state court proceeding. In accordance with 43 C.F.R. subpart E, it is generally the policy of the Department of the Interior (Department) not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, if submitted, the Department will consider and make a decision to grant a request using the criteria set forth in § 2.88 of this subpart. The following is our decision on your request:

(a) Your ability to obtain the testimony or record from another source. Your request is for testimony of Mr. Kelly and Ms. Dickerson related to a comment letter dated December 12, 2005, signed by Mr. Kelly on behalf of the U.S. Fish and Wildlife Service (Service) to the Wyoming Department of Environmental Quality (DEQ). The Service responded to a DEQ Public Notice for comments concerning the proposed reclassification of three drainages to Crazy Woman Creek and their tributaries (Kennedy Oil South Area Addition) in northeastern Johnson County.

According to your request, the letter may not be submitted into evidence without the testimony of either Mr. Kelly or Ms. Dickerson.

(b) The appropriateness of the employee testimony and record production under relevant regulations. Your request is appropriate under relevant regulations.

(c) Our ability to:

- (1) Conduct our official business unimpeded;**
- (2) Maintain impartiality in conducting our business;**
- (3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;**
- (4) Avoid spending public employee's time for private purposes;**
- (5) Avoid the negative cumulative effect of granting similar requests;**
- (6) Ensure that privileged or protected matters remain confidential; and**
- (7) Avoid undue burden on us.**

Our letter and comment on the DEQ proposal was prepared by Ms. Dickerson and submitted to the DEQ for consideration. Ms. Dickerson is the subject matter expert for the trust resource issue outlined in our letter and is the only suitable person to

provide testimony. Mr. Kelly is not in a position to provide testimony related to this matter, and to ~~require him to~~ do so would place an undue burden on the Service.

As you are aware, Ms. Dickerson is on extended sick leave. Her expected return date is around the middle of November. You may want to resubmit your request for our consideration at that time.

We are returning your check number 514815 in the amount of \$203.00. If you are still interested in obtaining the testimony of Ms. Dickerson, please resubmit your request, along with a statement of your willingness to pay to the U.S. Fish and Wildlife Service, Attn. Cathy Willis at the above address.

For additional information concerning this matter please feel free to contact me at 303-236-4589.