

Don Banner

From: Dick, Jennifer [Jennifer.Dick@fema.dhs.gov]
Sent: Thursday, April 13, 2017 11:49 AM
To: dbanner@bannerbower.com
Cc: rickkidd@kiddengineering.com; Sutley, David; Pietramali, Ryan
Subject: FW: April 28 district Court Hearing

Mr. Banner,

I'm reaching out to you on behalf of FEMA Region VIII employee, David Sutley, who was asked to participate in an upcoming court hearing involving the Pueblo Conservancy District Maintenance Fund Assessment.

FEMA and the Department of Homeland Security's (DHS) regulations restrict federal employees from providing testimony in private third-party litigation. With regard to testimony, FEMA's regulations at 44 CFR § 5.87(a) state:

No FEMA employee shall testify in response to a subpoena or other demand in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

The Chief Counsel for the Agency can only provide a waiver upon a determination that participation is necessary to promote a *significant interest of the agency* or other good cause. 5 CFR § 5.89. This is a very high standard and rarely done. Similarly, DHS's regulations, located at 6 CFR 5.44(a) provide that:

[n]o employee . . . of the Department shall, in response to a demand or request, including in connection with any litigation, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person's official duties . . . unless authorized to do so by the Office of General Counsel

The regulations were crafted to maintain strict impartiality with respect to private litigants/matters and to preserve human resources for performing official agency functions. Based upon the forgoing, David cannot provide the requested testimony or participate in the hearing.

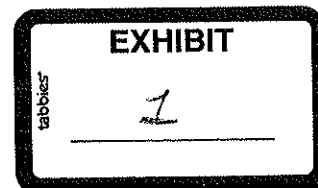
The Region can, however, continue to provide technical assistance with respect to levee certification requirements.

If you have any follow up questions, please let me know. Thank you,

Jennifer Dick, Regional Counsel
FEMA Region VIII, Denver CO
(303) 235-4903
(303) 563-9230

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From: Sutley, David
Sent: Wednesday, April 12, 2017 11:36 AM
To: Dick, Jennifer <Jennifer.Dick@fema.dhs.gov>; DeFelice, Jerome <Jerome.DeFelice@fema.dhs.gov>
Cc: Pietramali, Ryan <Ryan.Pietramali@fema.dhs.gov>
Subject: April 28 district Court Hearing



David Sutley, P.E.
O: (303) 235-4809
C: (720) 281-1092

From: Kim Kock [<mailto:kkock@northstar-co.com>]
Sent: Tuesday, April 11, 2017 12:38 PM
To: Sutley, David <david.sutley@fema.dhs.gov>
Cc: dbanner@bannerbower.com; rickkidd@kiddengineering.com
Subject: April 28 district Court Hearing

David: Thank you for calling me back on Friday afternoon, sorry I missed your call. As you and I have been unable to connect yet this week, I wanted to send you this list of questions for the April 28 District Court hearing regarding the Pueblo Conservancy District Maintenance Fund Assessment. As we have discussed, District Court approval of an increase in the current Maintenance Fund Assessment is critical to the Conservancy District moving forward on the remaining portions of the Arkansas River Levee Improvements Project through the City of Pueblo. Time is getting shorter to coordinate testimony for that hearing. I know that the Pueblo Conservancy District, and their attorney (Don Banner,) feels it is very important that FEMA's position regarding levee certification and flood plain impacts be presented to the court. Don Banner's email address is included above. His office phone number is 719-544-5086. Please feel free to contact him directly with any questions, comments, or concerns you may have. You have my office number but you can also reach me on my cell phone at 719-250-8096.

Don, David's contact information is as follows: Office 303-235-4809, Cell 720-281-1092.

I appreciate everyone's efforts in working together towards a successful result at the April 28th hearing.

Respectfully, Kim Kock, President, NorthStar Engineering and Surveying, Inc.