

Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Acting Director

February 6, 2007

IN REPLY TO:

Senator Leroy Louden  
District 49, State Capitol  
P.O. Box 94604  
Lincoln, NE 68509-4604

Dear Senator Louden:

In response to the testimony by Mr. Steve Smith at the February 2<sup>nd</sup> Natural Resources Committee hearing on the confirmation of Ann Bleed as Director of NDNR, I am sending you some documents related to Mr. Smith's recurring requests for the records of the Department. Mr. Smith told the Committee that he has had an extremely difficult time obtaining information from the Department. The enclosures will show that he has asked for voluminous amounts of information and the Department has always been willing to supply it but requested that its costs be reimbursed.

As you will see from the enclosed correspondence, Mr. Smith has asked for, among other things, "all: model input data, model output data, worksheets, reports, correspondence, meeting notes, support documents, and working documents" of the Department. In accordance with state law, the Department estimated the cost of retrieving and copying that amount of information and informed Mr. Smith. It was a substantial amount of money and he was not predisposed to pay. Once, Mr. Smith requested that the Attorney General's Office review the Department's response to his request. Assistant Attorney General Dale Comer found the Department to be acting within the law. As he recently pointed out, an important practical consideration of Nebraska law on public records which might otherwise be ignored is that the right to public information may not be used to prevent a public agency from carrying out its other duties within finite available resources.

We would like you and your colleagues to understand that the Department has never denied Mr. Smith any information that he was willing to pay for as long as it was not considered privileged and confidential. Please share these documents with your colleagues and feel free to call me if you have any questions or concerns.

Sincerely,

Ron Theis  
Legal Counsel

cc: Jody Gittins, Committee Counsel

legal/theis/2007

**Ann Diers**

---

**From:** Steve Smith [steve@waterclaim.org]  
**Sent:** Friday, October 28, 2005 5:01 PM  
**To:** adiers@dnr.state.ne.us  
**Cc:** 'Steven G. Seglin'  
**Subject:** RE: Open Records Request

Ann

Since the price for the information is far above what I expected and what I think is reasonable, perhaps it is best if we clarify what it is that is being requested and provided.

I am asking for an electronic copy of all Microsoft Excel worksheets that have been created since January 1, 2005 that deal with the Republican River Basin. I expect this number to range anywhere from 1 to 200 worksheets and all sit on Ann Bleed's hard drive. Any competent computer user would be able to copy the relevant information to one or two CDs or a DVD within 20 minutes. The number of worksheets, of course, being irrelevant to the amount of work it takes to copy them to a CD or DVD.

If this expectation is inaccurate, then please provide a catalog of what Excel worksheets exist and when they were created along with a more detailed breakdown of justification for the \$750 bill.

Please remember, that in 2004, the DNR provided a copy of all Excel worksheets and RRCA data and placed that on a hard drive that I provided and did so at no cost. That was done within a few days of my providing the hard drive.

Please advise me by return email no later than November 1<sup>st</sup> as to the justification for cost for a simple request.

Steve Smith, Director  
 WaterClaim  
 PO Box 698  
 Imperial, NE 69033  
 308 882 3020  
 www.waterclaim.org

---

**From:** Ann Diers [mailto:adiers@dnr.state.ne.us]  
**Sent:** Friday, October 28, 2005 2:47 PM  
**To:** 'Steve Smith'  
**Cc:** Dave Vogler  
**Subject:** RE: Open Records Request

Steve:

I received your revised request for public records on October 24<sup>th</sup>.

This email is being sent to comply with Neb. Rev. Stat. Section 84-712(4), which provides that if the records cannot be provided to a requester with reasonable good faith efforts within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, the Department will provide a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost, and an opportunity for the requester to modify or prioritize the items within the request.

In our conversation earlier this week, you agreed that your request is limited to existing excel spreadsheets relating to the Republican River since you obtained information from the Department in August of 2004. I have advised the employees gathering the requested information of the limited scope of the request. Based on this more limited request, the earliest date the Department could fulfill the revised request and send the information

5/3/2006

would be November 10<sup>th</sup>. The Department estimates the cost of providing this information will be \$749.70. The Department requests a deposit in the amount of \$400.00 prior to forwarding the records. The balance will be due within 30 days after your receipt of the records, and an invoice showing the balance due. Please advise me by return email no later than November 1<sup>st</sup> as to when we may expect to receive your deposit, so that we may continue to process your request.

You may modify or prioritize the items within your request. If you have any questions, please contact David Vogler.

Ann

-----Original Message-----

**From:** Steve Smith [mailto:steve@waterclaim.org]

**Sent:** Monday, October 24, 2005 11:36 AM

**To:** 'Ann Diers'

**Subject:** Open Records Request

Ann

As I have not received a reply to my last email of October 12, I will make the following official request.

Please provide WaterClaim an electronic copy of the Excel worksheets that the DNR currently has that are related to the Republican River.

This request is dated 10-26-2005

Steve Smith, Director  
WaterClaim  
PO Box 698  
Imperial, NE 69033  
308 882 3020  
www.waterclaim.org



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
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TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
TIERONE FAX (402) 471-4725

**JON BRUNING**  
ATTORNEY GENERAL

**DALE A. COMER**  
ASSISTANT ATTORNEY GENERAL

March 31, 2006

Mr. Steve Smith, Director  
WaterClaim  
P.O. Box 698  
Imperial, NE 69033

Re: *File No. 06-R-112; Dept. of Natural Resources; WaterClaim.*

Dear Mr. Smith:

This letter is in response to your earlier correspondence dated March 15, 2006, which we received on March 16, 2006. You asked us to review a "denial and/or burdensome restrictions on access to public information" by the Nebraska Department of Natural Resources (the "Department" or "DNR"). You made your request under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (1999, Cum. Supp. 2004), and we considered your letter to be a petition under § 84-712.03. Our response to your petition is set out below.

Our understanding of the facts in this case is based upon the materials which you sent to us with your letter. We have also obtained additional materials from the Department.

In October, 2005, you began an exchange of emails with the Department requesting various records. You initially requested "an electronic copy of the Excel worksheets that the DNR currently has that are related to the Republican River." Ann Diers wrote back to you for the Department and indicated that it would take approximately two weeks to prepare the records which you requested, and that the cost of providing that information would be approximately \$749.70. You took issue with that charge, and asked for a breakdown of the cost or a justification for the \$750.00 bill. You also indicated that you were asking for "an electronic copy of all Microsoft Excel worksheets that have been created since January 1, 2005 that deal with the Republican River Basin." Ms. Diers wrote back to you a second time, and indicated that the charge at issue was based upon the time that it would take for the Department to analyze your records request. After the second response from

Mr. Steve Smith, Director  
March 31, 2006  
Page 2

Ms. Diers, you contacted the Governor's office in an unsuccessful attempt to get the records. You then sent your letter to this office.

It is our understanding that the Department will provide you with the records which you seek in an electronic format unless a review of the records indicates that some assertion of privilege is appropriate. As a result, your records petition actually involves the propriety of the estimated \$750 charge for the records.

Neb. Rev. Stat. § 84-712 (Cum. Supp. 2004) requires public bodies in Nebraska to provide copies of public records at the request of members of the public. However, in providing such copies, the custodian of those records may charge a fee for doing so which does not exceed the actual cost of making the copies available. With respect to the actual costs for electronic copies, § 84-712 states that "that actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester." We have also indicated that actual costs for copies of records under the Public Records Statutes may include the cost of an employee's time to find the records, make the copies, and return the records to their files. Op. Att'y Gen. No. 01029 (August 2, 2001). In addition, we have taken the position that the actual costs of producing records in response to a records request may include the costs of a review by counsel for the agency to determine whether particular records are responsive or privileged.

Our information in the present instance indicates that the charges proposed by the Department for the records which you seek break down as follows:

|  |                        |
|--|------------------------|
| Employee time for selecting responsive documents from the Department's computer files and transferring those documents to your hard drive-<br>4 hours @ \$35.51/hr and 6 hours @ \$23.55/hr. | Total - \$283.34       |
| Employee time for document review by Department Counsel - 2 hrs. @ \$27.98/hr.   | Total - \$ 55.96       |
| Employee time for review by Attorney General's Office - 8 hours @ \$51.30/hr.  | Total - \$410.40       |
|  | Grand Total - \$749.70 |

We do not believe that the charges proposed by the Department for the time of its employees in responding to your records request are inappropriate in this

Mr. Steve Smith, Director  
March 31, 2006  
Page 3

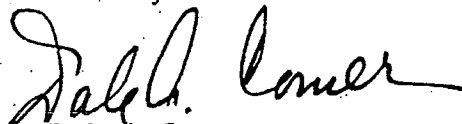
instance. We understand that Department employees will have to separately pull the records which you seek from among computer files and transfer them to your hard drive. In addition, since there is the potential for litigation over the water settlement with the State of Kansas, we think that it is acceptable for the Department's counsel to review the records in this case for any possible claims of privilege. However, we do not believe that the Department may charge for time expended by personnel of this office in looking at the records in question. Consequently, in our view, the first two charges listed above are permissible. The third is not. As a result, it seems to us that Department may charge you an approximate cost of \$339.30 for the records which you seek. Under § 84-712, the Department may also ask you for a deposit before it produces the records. We understand that the Department is willing to provide you with the records on that basis. That result requires no further action by this office.

In your letter of March 15, 2006, you also asked us to order the release of information requested by the *Imperial Republican*, and you enclosed copies of a public records request posed by the newspaper to the Department. For your information, it is our general policy not to respond to public records requests from one person on behalf of another, unless the individual posing the request is an attorney representing his or her client. Therefore, we plan no further action with respect to documents requested by the *Imperial Republican*. However, we certainly will review a records request from the newspaper itself if it chooses to make such a request to us in writing.

If you disagree with our analysis under the Public Records Statutes set out above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely yours,

JON BRUNING  
Attorney General

  
Dale A. Comer  
Assistant Attorney General

**Ann Diers**

---

**From:** Ann Diers [adiers@dnr.state.ne.us]  
**Sent:** Tuesday, November 01, 2005 3:01 PM  
**To:** 'Steve@waterclaim.org'  
**Cc:** Dave Vogler (dvogler@dnr.state.ne.us)  
**Subject:** Records Request

Steve:

There are several justifications for the estimate you have received. Last year, you may have received several items that did not qualify as public records. This year, we are reviewing material to be sure that you receive only the public records responsive to your request.

In addition, we have learned that DNR, as well as other state agencies, may charge persons requesting public records the cost of the time spent in analyzing the records requests. Accordingly, the estimate we have forwarded includes a charge for the time that each of two employees must spend searching their computers for the requested material. The estimate also includes charges for the time that DNR's attorney and the Attorney General's office must spend analyzing the materials located in order to ascertain that the materials qualify as public records.

Please advise by return email no later than November 2, 2005, as to when we may expect your deposit, so that we may continue to process your request.

Ann

\*\*\*\*\*

Ann D. Diers  
Legal Counsel  
Nebraska Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4676  
Phone: (402) 471-3931  
Fax: (402) 471-2900  
e-mail: [adiers@dnr.state.ne.us](mailto:adiers@dnr.state.ne.us)

\*\*\*\*\*



Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Acting Director

April 11, 2006

IN REPLY TO:

Steve Smith  
P.O. Box 698  
Imperial, NE 69033

Dear Mr. Smith:

The Nebraska Department of Natural Resources received your deposit, April 10, 2006, for all Excel spreadsheets pertaining to the Republican River valley which you requested in the fall of 2005. Receipt of your deposit enables your request to be processed, and we are seeking to collect and review the records for forwarding to you as soon as possible. Neb. Rev. Stat. § 84-712(4) provides that if records cannot be provided to a requester with reasonable good faith efforts within four business days after actual receipt of the request, we must notify you to explain. Due to the current workload, personnel that are collecting the material are unable to finish until April 24<sup>th</sup>. The nature of the material must then be examined by legal staff regarding privilege, as some may pertain to existing lawsuits. The Attorney General's Office informs me they should be able to finish screening the material by April 27<sup>th</sup>. The public, unprivileged information will then be forwarded to you immediately. Thank you for your patience in the meanwhile.

Sincerely,

Ron Theis  
Legal Counsel

clrshare/theis/2006





Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Acting Director

May 26, 2005

IN REPLY TO:

Steve Smith, Director  
Waterclaim  
P.O. Box 698  
Imperial, NE 69033

Dear Mr. Smith:

I am writing in reference to your request for public information which originated in the fall of 2005, was abandoned by you thereafter, and then renewed in April, 2006, for all Excel spreadsheets pertaining to the Republican River Basin created since January 1, 2005. Your deposit for that material was received April 10, 2006, and noted in my April 11, 2006 letter and later emails to you. Subsequently, the material was collected by Department staff, and reviewed by Legal Counsel. It was then reviewed by staff of the Attorney General's Office, and was sent back to us May 24, 2006 with concurrence on which records may be considered privileged. The compact disc enclosed contains some of the records you requested, but not those records determined by the Department to be withheld pursuant to Neb. Rev. Stat. § 84-712.05(4).

As the public official or employee responsible for the decision to deny your request for access to some of the records, I am also informing you that you may have an administrative or judicial right of review of our denial of copies or access to records under Neb. Rev. Stat. § 84-712.03.

As noted to you by the Assistant Attorney General, March 31, 2006, in response to your questions about the estimated costs for obtaining the records, pursuant to Neb. Rev. Stat. § 84-712 (Supp. 2004) the Department may charge a fee for public records not to exceed the actual cost, but including Department employees' time to find the records, and review them for determining their responsiveness to your request. The amended cost estimate suggested by the Attorney General then was \$339.30, part of which we received April 10 in order to begin our response. In the process of responding, however, we found the actual cost to be higher due to more Department employee time involvement than originally estimated.

clrshare/theis/2006

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DNR 005988

Mr. Steve Smith  
May 26, 2006  
Page 2

The actual cost break down is as follows:

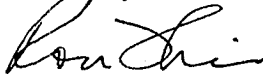
Employee time for selecting responsive documents and creating electronic copy-  
9.5 hrs. @ \$35.51/hr, and 6 hrs. @ \$23.55/hr Total - \$496.30

Employee time for document review by Department Counsel-  
2 hrs. @ \$27.98/hr. Total - \$55.96

Grand Total - \$552.71  
Deposit Received - \$220.00  
Balance Due - \$332.71

Please forward the balance due within 30 days of your receipt of the records.

Sincerely,



Ron Theis  
Legal Counsel

enc: One C.D. "Steve Smith Data Request"



**Dave Heineman**  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
**Roger K. Patterson**  
Director

October 14, 2005

IN REPLY TO:

Mr. Russell D. Pankonin, Co-Publisher  
The Imperial Republican  
622 Broadway  
P.O. Box # 727  
Imperial, NE 69033

RE: Letter Request Dated October 6, 2005

Dear Mr. Pankonin:

The Nebraska Department of Natural Resources received your request for copies of public records on October 11, 2005.

This letter is being sent to comply with Neb. Rev. Stat. § 84-712(4), which provides that if the records cannot be provided to a requester with reasonable good faith efforts within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, the Department will provide a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

In our conversation this morning, I told you that the request as drafted in your letter was extensive, and that if you did not wish to revise the request, the Department would not be able to provide the information requested for some time period, which it cannot estimate until it researches the impact, but that the time period would most likely be a number of months.

We also discussed that your letter offered to further "clarify" the request. I advised that if you would clarify the request to include and be limited to "Republican River Compact Administration related material," or "Republican River Compact Administration computations of water use and water supply," the Department would anticipate being able to provide the requested information in about five weeks, or three weeks, respectively, from the date of this letter.

You indicated that you wished to clarify and revise your request to be limited to the following items, to the extent generated since January of 2005:

clrshare/diers/2005

Mr. Russell Pankonin  
October 14, 2005  
Page 2

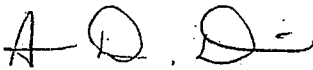
1. Republican River Compact Administration computations of water use and water supply.
2. Written correspondence with the NRDs by letter, memo, and/or email concerning Republican River Compact Compliance, but not including any such documents relating to the preparation of integrated management plans prior to their adoption.
3. Model runs involving various assumed facts to produce scenarios and make projections relating to Compact compliance.

Based on this more limited clarification of your request, the earliest date the Department could fulfill the request would be five weeks from the date of this letter. At the present time, the Department is not able to provide you an estimated cost. Please sign below and return a copy of this page to me as your acknowledgement of your revised request.

You are also advised that you may modify or prioritize the items within your request.

If you have any questions, please contact me.

Sincerely,

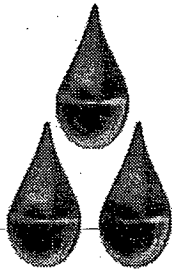


Ann D. Diers  
Legal Counsel

Acknowledgement:

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Russell D. Pankonin



[www.WaterClaim.org](http://www.WaterClaim.org)

## WaterClaim

A Non-Profit 501 (c)(5) organization  
P.O. Box 698  
Imperial, NE 69033  
308-882-3020  
[info@waterclaim.org](mailto:info@waterclaim.org)

April 7, 2006

Department of Natural Resources  
301 Centennial Mall South  
Lincoln, Nebraska 68509-4676

RECEIVED

APR 11 2006

DEPARTMENT OF  
NATURAL RESOURCES

### Open Records Request

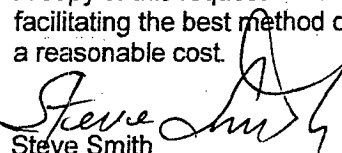
WaterClaim formally requests access to all Department of Natural Resource records that are not privileged or sealed. This includes, but is not limited to, all:

- Model input data
- Model output data
- Worksheets
- Reports
- Correspondence both electronic and hard copy
- Meeting notes
- Support documents
- Working documents.

Unfortunately, we are not aware of what all may exist that should be public, so our request is for all non-privileged material.

We believe the most efficient method to provide access to this information is for the department to review all material and protect any information that may be privileged and then provide access to all other material for WaterClaim and the public to review. We would, then, be permitted to copy – using our own copier or the department's copier at a reasonable fee – what we wished. In order to minimize disruption to the department's operation, we suggest all electronic material be placed on a computer that the public may access remotely or in person.

A copy of this request is being provided to the Attorney General's office so as to obtain their assistance in facilitating the best method of providing public access to public documents in a reasonable time frame at a reasonable cost.

  
Steve Smith  
Director

**Ron Theis**

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**From:** Steve Smith [steve@waterclaim.org]  
**Sent:** Wednesday, April 12, 2006 9:50 AM  
**To:** rtheis@dnr.ne.gov  
**Subject:** RE: NDNR information request

That is correct. We will, at the request of the Attorney General's office amend our request to limit the scope to the Republican River Basin. Dave Cookson has indicated that this would be easier for you and the AG's office.

Steve Smith, Director  
WaterClaim  
PO Box 698  
Imperial, NE 69033  
308 882 3020  
www.waterclaim.org

"The one who says it cannot be done should never interrupt the one who is doing it."

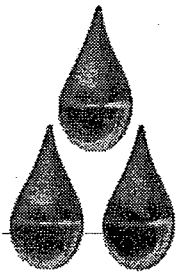
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**From:** Ron Theis [mailto:rtheis@dnr.ne.gov]  
**Sent:** Wednesday, April 12, 2006 9:20 AM  
**To:** info@waterclaim.org  
**Subject:** NDNR information request

To: Steve Smith, Director

Mr. Smith,

I was advised by Attorney General's Office that you will be amending your request for information from NDNR, dated April 7, 2006, to narrow the scope. I was also advised by AG that, subsequently, we should ignore that request and await receipt of an amended request. As a time saver, would you please confirm for us whether these are indeed your intentions in an e-mail reply? Thanks.  
Ron Theis, Legal Counsel for NDNR



[www.WaterClaim.org](http://www.WaterClaim.org)

## WaterClaim

A Non-Profit 501 (c)(5) organization  
P.O. Box 698  
Imperial, NE 69033  
308-882-3020  
[info@waterclaim.org](mailto:info@waterclaim.org)

RECEIVED

APR 14 2006

DEPARTMENT OF  
NATURAL RESOURCES

April 11, 2006

Department of Natural Resources  
301 Centennial Mall South  
Lincoln, Nebraska 68509-4676

### Open Records Request

WaterClaim formally requests access to all Department of Natural Resource records that deal with the Republican River Basin that are not privileged or sealed. This includes, but is not limited to, all:

- Model input data
- Model output data
- Worksheets
- Reports
- Correspondence both electronic and hard copy
- Meeting notes
- Support documents
- Working documents.

Unfortunately, we are not aware of what all may exist that should be public, so our request is for all non-privileged material.

We believe the most efficient method to provide access to this information is for the department to review all material and protect any information that may be privileged and then provide access to all other material for WaterClaim and the public to review. We would, then, be permitted to copy -- using our own copier or the department's copier at a reasonable fee -- what we wished. In order to minimize disruption to the department's operation, we suggest all electronic material be placed on a computer that the public may access remotely or in person.

A copy of this request is being provided to the Attorney General's office so as to obtain their assistance in facilitating the best method of providing public access to public documents in a reasonable time frame at a reasonable cost.

Steve Smith  
Director

If you responded to the April 17 memo below, thank you. If you did not respond yet, we still need your individual response as soon as possible. Some staff indicated their supervisor was responding for the entire work area. If this is your situation, please confirm that to me by identifying who responded on your behalf. Please note that the material requested is comprehensive and without timeframe, for "all records that deal with the Republican River Basin", and a record is anything written, printed, recorded, or retained electronically or otherwise. Undoubtedly, there will be duplicates of some records, but we need your individual consideration in order to be thorough.

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**From:** dnrstaff@dnr.ne.gov [mailto:dnrstaff@dnr.ne.gov] **On Behalf Of** Ron Theis  
**Sent:** Monday, April 17, 2006 11:38 AM  
**To:** Ron Theis  
**Subject:** [dnrstaff] Large Request for Public Information

To: All Staff

NDNR received a request for a large amount of public information, basically all records the Department does not consider privileged pertaining to the Republican River basin. Collecting and sorting such an amount of records will be time consuming and a determination of what a record is, and what is a public record for the purpose of such requests. The request, in describing broad intent, outlines certain categories which may be useful in reviewing and collecting what is available: "model input data, model output data, worksheets, reports, correspondence both electronic and hard copy, meeting notes, support documents, working documents."

The Legal Department asks all staff to think about, and begin reviewing what you have available pertaining to "the Republican River basin" in anticipation of answering the request for information. No decision has been made yet about the most appropriate way to access such information, or the estimated cost for copying which will be passed on to the requester. Preliminary information from staff indicating the quantity will be useful for the planning necessary to comply with the request.

You are not being asked to provide the information at this point. Nor are you expected to make any determinations of whether any material you have is privileged.

After you have thought about this request, and considered whether you have information that may be responsive, you are asked to send an email to Ron Theis, by April 19, to inform him of the following:

1. Whether you have information that may be responsive to the request;
2. The categories of information you believe you have (referring to the categories above);
3. An estimate of the time it will take you to review your materials and provide the information (electronically, on a disc, or otherwise – and specify which).

We hope to have searches performed by the IT Division of all Department emails, so you do not need to include an estimate of your time to produce those, unless you have deleted material from the email system, yet retained hard copies in your files. Likewise, you should be aware of whether you have such emails, and should advise Ron of this as a cross check.

The letter making the request for information is posted in the mail area for your examination. The form is instructive. Please take a look at it if you wish. It will be posted through the end of the week.

4/24/2006

DNR 005995





Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Acting Director

April 20, 2006

IN REPLY TO:

Steve Smith, Director  
Waterclaim  
P.O. Box 698  
Imperial, NE 69033

Dear Mr. Smith:

We received your amended request for "access to all DNR records that deal with the Republican River Basin that are not privileged or sealed" on April 14, 2006. Neb. Rev. Stat. § 84-712(4) provides if the records cannot be provided to you with reasonable good faith efforts within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, we must notify you to explain and offer an opportunity to modify or prioritize items within the request.

In order to respond to your request, we must take an inventory of all Department records relating to the Republican River basin geographic area, and review them to determine which documents are required to be withheld from the public, either because of privilege or pursuant to state law. The Department is not obligated to provide public records in any format other than the format in which the records exist in the Department. Therefore, the Department will not be aggregating the electronic material on a separate computer. Some of the material within the apparent scope of your request, i.e. well registrations, EQIP applications, etc., contains social security numbers or bank account numbers which must be excised prior to allowing public access, pursuant to Neb. Rev. Stat. 84-712.05 (16). NDNR has many records which fit the general description of your interest, many of which are very old. If it is possible for you to narrow the scope of your request, for example in terms of a time period or other limits, it will facilitate our response time to your request. Also, if you are able to narrow the scope, we may be able to more accurately estimate the time it will take to provide the records to you, and reduce the cost involved.

At this point the volume of material indicated by your parameters hampers our ability to precisely estimate the response time and expense to meet your request. For example, we believe there are about 673,000 unduplicated emails between September, 2004 and the present. It will take 9 hours of I.T. staff time plus computer run time, with about three days elapsed time, to make them available for legal review. If you want emails prior to September, 2004, it will take about 46 hours I.T. staff time, and 20 hours run time, with about two weeks elapsed time, just to recover the emails because we must re-install the operating system used during that period in

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DNR 005996

Mr. Steve Smith  
April 20, 2006  
Page 2

order to extract data. In addition, the multiple search criteria necessary to find your material electronically are only useful for text files, not PDF, Excel, or Power Point files which may be attached. The latter, as well as the hard copy only records, must be manually searched.

We have extensive hard copy records fitting your request. For example, there are about 400 surface water rights relating to the Republican River. The number of pages in each of these records varies between 15 and 500. We have about 1000 microfilmed copies of canceled and denied rights in the Republican with similar page length ranges for each. We also keep Natural Resources District files and U.S. Bureau of Reclamation files within the apparent scope of your request. We have about 500 to 800 hard copies of regulating and closing notices to surface water irrigators sent during the 2005 irrigation season alone. There are about 14,000 ground water well registrations in the Republican basin, comprised from 3 to 15 pages for each one. We also have Water Policy Task Force and Natural Resource Commission materials, CREP files, ground water transfer files, map transfer files, dam inspections and inventory, flood plain material, stream flow data, aerial photography, soil data, and pending applications, among others.

The Department's website, [www.dnr.ne.gov](http://www.dnr.ne.gov), is an access point for some material within the apparent scope of your request. We are currently intending, within the limits of our resources, to make as much relevant information available on the website as possible for citizens' use. However, electronic accessing of all our records pertaining to the Republican River area is not feasible in the near future because of the volume, and due to the Department's budgetary constraints. Your request is unique in seeking working documents and notes which would normally be considered non-record material, once final versions of documents are completed (State Records Administrator's Rule 430, Chapter 5, Section .004.02), and are not necessarily required to be retained by the Department.

We will provide you with the public records that you want within the law, but please keep in mind the cost to respond to your current request will be substantial. Neb. Rev. Stat. § 84-712 requires public bodies to provide copies of public records at the request of members of the public. However, in providing such copies, or accessing the material for copying, the custodian of the records may charge a fee, not exceeding the actual cost, including the cost of employees' time in responding. As the employees' time in gathering documents that may be responsive to your request, and analyzing electronic materials, will be expended regardless of the number of copies of materials you decide to obtain once you have received access to the documents, it will be necessarily included in the cost estimate. Due to the scope of your request, the number of hard copies would also be extensive and time consuming to produce. Unless you limit the scope of your request, the cost may be prohibitive to you, and the scope prevents us from giving an accurate estimate within the time frame indicated in § 84-712(4) it will take for the Department to respond to your request.

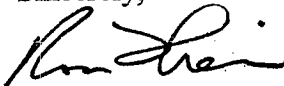
We are in the process of obtaining estimates from Department staff of the time it will take them to review and retrieve records that may be responsive to your request. Once we have that

Mr. Steve Smith  
April 20, 2006  
Page 3

information, we will be able to provide you a very rough estimate of the earliest practicable date for fulfilling the request and an estimate of the cost, along with a request for a deposit of at least half of the estimated cost. The deposit will be due prior to the Department beginning to process your request. We anticipate being able to respond to you by May 15, 2006 with the estimates of how long it will take to process your request, and the estimated cost of your request. Note that we anticipate the estimates will be broad estimates, and that the actual time it will take to process your request, and the actual costs you will incur, may be lower or higher than the ranges given. We encourage you to take advantage of this opportunity to modify or prioritize items within your request. Possible ways to modify the request that could save time and money include providing a cutoff date (e.g., only records and materials since [enter a year]), or specifying a narrower class of information (e.g., only Republican River basin materials relating and pertaining to the Water Policy Task Force).

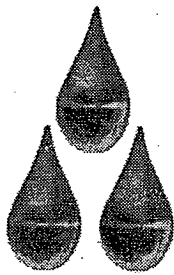
Please let us know as soon as possible if you would like to modify or prioritize items within your request.

Sincerely,



Ron Theis  
Legal Counsel

rt



[www.WaterClaim.org](http://www.WaterClaim.org)

## WaterClaim

A Non-Profit 501 (c)(5) organization  
P.O. Box 698  
Imperial, NE 69033  
308-882-3020  
[info@waterclaim.org](mailto:info@waterclaim.org)

April 26, 2006

Department of Natural Resources  
301 Centennial Mall South  
Lincoln, Nebraska 68509-4676

RECEIVED

MAY 01 2006

DEPARTMENT OF  
NATURAL RESOURCES

### Open Records Request

WaterClaim is willing to limit its request to substantially reduce the workload. Our purpose is not to cause an undue burden on the Department but to simply find and be able to access the few documents that are necessary for policy officials to have in order to make policy. The primary problem we have is that the Department maintains no catalog or index or any kind of reference that we know of that would allow us to specifically identify the documents we would like to access.

Perhaps you can help us phrase our request so that we do not miss anything but, at the same time, limit the work load. The type of things that we would like to review are:

1. Any document, report or other information provided to the Governor, any of the members of the Water Policy Task Force, or the Republican River Basin NRDs or their Board members within the last 18 months regarding the Republican River Basin.
2. We expect that there are internal studies that have already been worked by the Department within the last 18 months that analyze the Republican River Basin. We would like to review any report, analysis, or working papers, that study the effect of irrigation, vegetation, or conservation on stream flow. We are also interested in any analysis that estimates or predicts depletions and the benefits of various compliance options. We are specifically interested in any details that would quantify the depletions caused by variables such as time, distance, district, or any other method of differentiation. We do not know the name of these documents but believe they must exist in order for Nebraska to make reasonable and informed policy.
3. Any correspondence, especially electronic, regarding the Republican River Basin with any party since September 2004.
4. The approximate number of documents from the three above categories that are classified as privileged.

As you are aware from other communications, we are frustrated by the hurdles that are in place regarding all information. Even the simplest requests, such as how many acres in the Basin are classified as Quick Response, must be submitted in writing, must go

through legal review, must have a cost associated with it, and takes a minimum of a couple of weeks and as much as a month or two to answer. This policy of forcing all requests through the legal process discourages anyone from even asking in the first place.

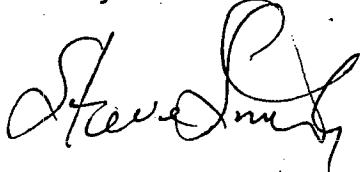
There have been repeated requests for information by WaterClaim and the NRDs for any reports or data that will help make what is happening in the Republican River Basin clear. Unfortunately, current policy makes it very difficult, very expensive and very time consuming to access even basic information. Good public policy cannot be made without access to the best data available and, yet, there are severe obstacles to the essential information.

It is our understanding that the Attorney General's office has asked the DNR to label each document as it is created as to whether it is privileged or not. If this has been done, then the request for information that we are making should not be overly burdensome.

We believe the DNR should do as other agencies current do. That is, when a report, collection of data, or letter is prepared, a copy should be made easily accessible to the public, should the public ever wish to review the material. We realize that the Department has operated under the threat of a lawsuit for a long time and that virtually everything is now treated as privileged. We realize that it will be a lot of work to review all current information and sort it into public vs. privileged, as the information is currently mixed together.

However, just because the Department has been improperly mixing privileged and non-privileged material together does not mean the requester of information should be responsible for the costs of correcting the problem. This creates an artificial burden on public access.

We ask that the Department institute policies now that will provide for reasonable public access in the future. If we submit another request for information one year from now, we believe our request for data should be much easier for the Department to provide in a timely fashion and at a reasonable cost.



Steve Smith, Director  
WaterClaim

cc: Nebraska Attorney General



Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
**Ann Bleed**  
Acting Director

May 5, 2006

IN REPLY TO:

Steve Smith, Director  
Waterclaim  
P.O. Box 698  
Imperial, NE 69033

Dear Steve,

We received your amended formal request for public information outlined in your April 26, 2006 letter May 1. It substantially reduces the scope of your earlier requests by asking for the following:

1. Any document, report, or other information provided to the Governor, any of the members of the Water Policy Task Force, or the Republican River Basin NRDs or their board members within the past eighteen months regarding the Republican River Basin.
2. Any internal studies completed within the last eighteen months analyzing or pertaining to stream flows or depletions in the Republican River Basin.
3. Any correspondence, especially electronic, with any party regarding the Republican River Basin since September, 2004.
4. The approximate number of documents in the three categories above which are privileged.

This letter is being sent to comply with Neb. Rev. Stat. § 84-712(4), which provides that if the records cannot be provided to a requester with reasonable good faith efforts within four business days after actual receipt of the request due to the significant difficulty or extensiveness of the request, the Department will provide a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items in the request.

We intend to provide the public records you request, but the scope of your request, the limited resources available within the Department, and our duty to keep some records confidential under Neb. Rev. Stat. § 84-712.05 and § 27-503 requires a longer timeframe for delivery than anticipated by Neb. Rev. Stat. § 84-712. As we anticipate different timeframes and expenses for the different categories, our findings regarding responding are explained independently. One general caveat applies; if you want material already published on our website, that material is not considered in this estimate of response time or expense.

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Steve Smith, Director  
May 5, 2006  
Page 2

#### Category One Request

They will require approximately 22 hours of staff time for searching, copying, and replacing in order to produce and could be available within approximately 10 days. We are unable to accurately estimate the cost at this time due to the different number of staff which may be involved. To the extent any of the material will require screening by the Attorney General, there will be some additional time delay beyond the approximated 10 days, but we are unable to estimate it at this time.

#### Category Two Request

Studies or analyses created within the Department on stream flow or depletions have been previously requested by you, most recently in your request for all pertinent Excel spreadsheets beginning in the fall of 2005. The Department maintains and uses this information in the form of Excel spreadsheets. Your deposit for that material was received April 10, 2005, and noted in my April 11, 2005 letter and later emails to you. The material has been collected by the Department. It is now being reviewed by the Attorney General for release to you. The Department staff involved in producing the information for that request advises me that there is nothing additional to be obtained in this category. I cannot predict how long it will take the Attorney General to finish the legal review, but it will be provided as a response to your earlier request.

#### Category Three Request

As noted to you earlier, we have more than 673,000 unduplicated emails from September, 2004. We have examined this pool for emails consistent with your request using a number of search criteria, and believe about 78,000 emails may be responsive to your request. Twelve hours of I. T. staff time have been expended so far at an expense of \$380. The selected emails have been cursorily examined, and determined to require review for compliance with Neb. Rev. Stat. § 84-712.05 and § 27-503 before release to you. This review time will be extensive, due to the manual process required in order to examine, open attachments to discover the contents, and select for further review by the Attorney General. About four hours staff time was expended for the cursory review so far, and less than 1,500 were examined. It is difficult to predict the actual review time; however the current experience suggests 208 hours staff time over at least a three to four month period. Sub searches of the emails, using fewer criterions, would produce fewer documents but reduce review time. For example, a single criterion "republican" produces approximately 10,500 emails. The estimated cost to produce this portion of your request cannot be calculated at this time, and we will supplement this correspondence with an email advising you of this cost as soon as it is available. Also note that the time necessary for production of these documents does not include any required review by the Attorney General prior to release to you.

Steve Smith, Director  
May 5, 2006  
Page 3

Other correspondence, in hard copy form, or located in individual electronic files, will require approximately 14 hours of staff time to produce, and may be available within approximately 10 days. The 10 days does not include any time the Attorney General may require to review the documents prior to release to you. The cost cannot be accurately calculated at this time because different personnel may be involved.

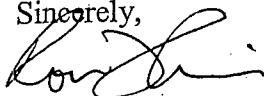
#### Category Four Request

We are unable to determine this information without completely fulfilling your request.

Neb. Rev. Stat. § 84-712 requires public bodies to provide copies of public records at the request of members of the public. However, in providing such copies, or accessing the materials for copying, the custodian of the records may charge a fee, not exceeding the actual cost, including the cost of the employees' time in responding. Section 84-712(4) requires the Department to give you an opportunity to amend your request further, or prioritize items, before we proceed.

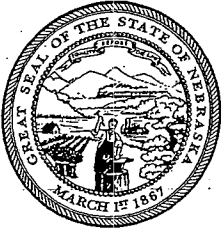
If you choose to proceed with the current request, we will provide you with a more detailed estimate of the cost, and require a deposit of at least half this estimate before beginning to process your request. Please note that the actual time to process your request and the actual costs you will incur may be lower or higher than the estimate given. Please let us know of your preference and we will provide a more detailed estimate of the cost and time needed to provide the information.

Sincerely,



Ron Theis, Legal Counsel





Dave Heineman  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Ann Bleed  
Acting Director

June 6, 2006

IN REPLY TO:

Steve Smith, Director  
Waterclaim  
P.O. Box 698  
Imperial, NE 69033

Dear Mr. Smith:

This is a further follow up on your April 26, 2006, amended request for public information. I initially responded on May 5, 2006, and emailed additional information to you to specify the costs involved on May 16, 2006. As noted in these combined communications, if you wish to proceed with the request, we will require a deposit of at least half the estimated cost of \$7,618 in order to proceed with the request. The estimate covers the anticipated cost in Department personnel time spent retrieving and reviewing the requested material and may be higher or lower than the actual personnel cost. It does not cover costs of any copies that will be required to be made. Once review is complete, you will receive correspondence indicating whether a legal basis exists for denial of access or copies. As indicated in my letter to you of May 5, 2006, we anticipate the earliest possible time that all of the documents you requested will be available will be at least four months following receipt of your deposit to initiate the process. Additional review time by the Attorney General may delay production. Section 84-712(4) requires the Department to give you an opportunity to amend your request further. My letter of May 5, 2006, suggested that it may be possible to cut down on the cost of your request (by decreasing the volume of email to be reviewed, for example by limiting the search criteria of emails to those with a single criterion "republican", etc.). I have not received any indication that you wish to amend your request. We will initiate processing your request once you submit the required deposit. We will consider your request abandoned if you do not submit the \$3,809 deposit for half the estimated cost or do not seek to further amend your request by June 20, 2006.

Sincerely,

Ron Theis  
Legal Counsel

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