

# DNR MEMO

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Record*

May 3, 2006

TO: Ann Bleed, Dale Comer, Lauren Hill, Dave Cookson, Justin Lavene, Brian Dunnigan,  
Jim Cook

FROM: Ann Diers

SUBJECT: Republican River Discussions

Following our conference call of April 20<sup>th</sup>, I thought it would be a good idea to summarize my understanding of the outcome, send it to the participants, and see if there is consensus in what I believe the results of the discussion were.

DNR will start with the premise that every record is public, and that people that request such records have a right to see them and/or copy them UNLESS the statute (§84-712.05) allows the Department to keep the particular record confidential.

In any situation in which the Department is challenged on its determination that a record is not a "public" record, it will be incumbent on the Department to justify why it believed the record to be subject to withholding from the public.

During the conference call, we discussed Republican River model runs that are prepared by or for Department staff from time to time. Those model runs are public records which must be disclosed UNLESS the particular run was prepared for the purpose of determining potential exposure or liability. All documents prepared for purposes of determining potential exposure or liability will be marked by Department staff as "Attorney-Client Privileged."

We discussed in general the Attorney General Opinion relating to draft documents. Based on that discussion, the Department does not anticipate withholding drafts from requests for public records, but will most likely mark model runs that have not been reviewed for accuracy internally as "draft-not reviewed," or a similar notation.

Previously, the Attorney General's office had requested that the Department place the caption "Attorney Client Privileged" on all emails and documents relating to the Republican River Basin. Based on our telephone conference call, only documents requesting or providing a legal opinion

or advice will be so marked, as well as documents prepared for the purpose of determining potential exposure or liability.

It is my understanding following our conversation that the Attorney General's office will need to review all documents that the Department proposes to provide pursuant to public records requests relating to the Republican River Basin, and the Attorney General's office may determine that documents that Department counsel does not consider attorney client privileged should be withheld pursuant to that privilege. Likewise, the Attorney General's office may determine that a document is a "draft" and may determine to rely on the Attorney General's Opinion that drafts need not be disclosed pursuant to a public records request.

It is my understanding that the Department does not need to receive permission from the Attorney General's office before release of public information, as discussed herein, other than formal record requests.