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January 3, 2020

Kim Shelley, Director of Operations
Department of Environmental Quality
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kshelley@utah.gov

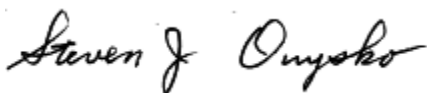
Director Shelley:

Subject: Appeal to Department of Environmental Quality (DEQ), Chief Administrative Officer, of December 6, 2019, Division of Drinking Water, Director Marie Owens, GRAMA Request de Facto Denial [Exhibit 2] of November 4, 2019, Steven Onysko GRAMA Request [Exhibit 1], to the Division of Drinking Water

I hereby appeal the above-cited GRAMA request fulfillment response of Division of Drinking Water Director Marie Owens, P.E. The response references my request for access to government documents related to the lead contamination of drinking water in Utah public water system UTAH18143, Emigration Improvement District (“EID”).

The response warrants my appeal for three principal reasons, First, the documents provided to me by DDW Director Owens to date are both incomplete and inaccurate. Second, DDW Director Owens' denial of fee waiver for additional search of DDW records is not consistent with Utah Ann. Code, Title 63 G, General Government, [Chapter 2](#), Government Records and Management Act. Third, DDW Director Owens' demand of my payment of \$2,934.56, for additional search of DDW records is egregiously punitive in magnitude. The body of my appeal follows herein.

Respectfully yours,



Steven J. Onysko

**1 THIS APPEAL COMPLIES WITH UTAH CODE ANNOTATED,
TITLE § [63G-2-401](#).**

This appeal is in accordance with:

Title [63G-2-401](#). Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1) (a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section [63G-2-205](#), if the governmental entity denies a record request under Subsection [63G-2-205](#)(1); or

(ii) the record request is considered denied under Subsection [63G-2-204](#)(9), if that subsection applies.

. . .

(2) A notice of appeal shall contain:

(a) the name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

2 DDW'S GRAMA MISREPRESENTATION ISSUES CAUSING APPELLANT TO SEEK RELIEF PER TITLE 63G, § 63G-2-204(9), GOVERNMENT ENTITY FAILURE TO PROVIDE REQUESTED RECORDS.

2.1 DDW Director Owen's Statement, December 6, 2019, that GRAMA Does Not Require the Agency to Conduct Research on Appellant's Behalf, Has No Foundation of Truthfulness in GRAMA.

The December 6, 2019 [Exhibit 2] response letter by DDW Director Owens includes the following statement:

"The Division notes that GRAMA does not require the agency to conduct research on your behalf"

Inspection of the Utah State Legislature website [PDF](#) version of Utah Ann. Code, Title 63 G, General Government, [Chapter 2](#), Government Records and Management Act, reveals no language that speaks to either a prohibition of, or a requirement for, agency research on behalf of a GRAMA requester. Utah Title § [63G-2-103](#), Definitions, has no definition of "research."

The November 4, 2019, Appellant's GRAMA request [Exhibit 1] to DDW contains no request for DDW research, and contains not even a single usage of "research." Appellant's GRAMA request is a request for DDW public documents "search," not "research."

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request.

2.2 DDW Director Owen's Statement, December 6, 2019, that "[t]he [D]enial of a [F]ee [W]aiver [R]equest [I]s [N]ot [E]quivalent to the [D]enial of [A]ccess to the [R]ecords [R]equested," Is Opinion, Not Fact, Given the Plain Language of Title 63 G, General Government, Chapter 2, Government Records and Management Act, § 63G-2-203(6)(a).

Utah Title § 63G-2-203(6)(a) states:

63G-2-203 Fees.

...

(6)

(a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section [63G-2-205](#).

The December 6, 2019 [Exhibit 2] response letter by DDW Director Owens states:

"This letter may be considered a final agency decision as to your fee waiver request. The denial of a fee waiver request is not **equivalent** to the denial of access to the records requested." *[Emphasis added.]*

Utah Title § [63G-2-203](#)(6)(a) has no "equivalent to" test or standard. DDW Director Owens' statement is a "red herring."

Appellant makes Utah Title § [63G-2-203](#)(6)(a) appeal to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request without fees and costs assessment to Appellant.

2.3 DDW's December 6, 2019, GRAMA Response to Appellant Made No Records Denial for Reason of Title § [63G-2-302](#) Private Records Denied Access, Title § [63G-2-304](#) Controlled Records Denied Access, or Title § [63G-2-305](#) Protected Records Denied Access, and So Title § [63G-2-301](#), Public Records, Is the Only Governing Records Classification for This Appeal.

Title 63G, § 63G-2-205 states:

63G-2-205. Denials.

- (1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- (2) The notice of denial shall contain the following information:
 - (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection [63G-2-201](#)(3)(b);
 - (b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection [63G-2-201](#)(3)(b);

The December 6, 2019, response letter by DDW Director Owens [Exhibit 2] did not invoke reason(s) of "nonpublic records classification" (i.e., § [63G-2-302](#) Private Records, § [63G-2-304](#) Controlled Records, or § [63G-2-305](#) Protected Records) for those portions of the November 4, 2019, Appellant's GRAMA request [Exhibit 1] which were unfulfilled by the DDW response. Therefore, this appeal addresses a "public records" access dispute between Appellant and DDW.

It is reasonably inferable that DDW did not regard any records requested in Appellant's November 4, 2019, GRAMA request as Title § [63G-2-302](#) private records, Title § [63G-2-304](#) controlled records, or Title § [63G-2-305](#) protected records. And, even if DDW did regard any of the requested records to have other than Title § [63G-2-301](#) public records status, DDW's failure to make that assertion in the December 6, 2019, GRAMA response letter [Exhibit 2] renders the issue irrelevant now. (*Deseret News Publ'g Co. v. Salt Lake County*, 2008 UT 26, ¶ 24, 182 P.3d 372, noting that GRAMA presumes public documents should be disclosed and the government has the burden to justify decisions prohibiting public access).

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request.

2.4 DDW Director Marie Owens Denied Appellant Access to Public Records that She Concedes Already Exist.

The December 6, 2019 [Exhibit 2] response letter by DDW Director Owens includes the following acknowledgements:

"Public water systems provide raw technical data to the agency on a periodic basis. This data is entered into an EPA-shared database known as SIDWS (*sic*)."

"[T]he GRAMA request ... implicates (*sic*) email records from a variety of current and former agency employees ..."

"The GRAMA Request states that you desire to review the requested records in person. The request to review records in-person is denied for several reasons."

These statements demonstrate that the December 6, 2019, Division of Drinking Water, Director Marie Owens, GRAMA Request Letter of Response [Exhibit 2] to November 4, 2019, Steven Onysko GRAMA Request [Exhibit 1], to the Division of Drinking Water, at least "in part" denies Appellant access to existing public documents.

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request.

2.5 DDW Director Owens Makes Illegitimate Fee Waiver Denial Finding on the Basis that, "[T]he [A]gency [B]elieves that [I]t [A]lready [P]rovides [A]dequate [L]evels of [I]nformation to the [P]ublic."

The December 6, 2019, response letter by DDW Director Owens [Exhibit 2] includes the following illegitimate argument:

"The GRAMA Request includes a request for waive fees for the records. The sole basis provided for this request is that the request primarily benefits the public. While it is true, as a general proposition, that matters relating to public water systems are in the public interest, the agency believes that it already provides adequate levels of information to the public, particularly persons who are connective (*sic*) to any given public water system, free of charge."

Utah Ann. Code, Title 63 G, General Government, [Chapter 2](#), Government Records and Management Act, contains no "weighing" provision wherein an agency may withhold GRAMA-requested public records if there is sufficient abundance of other, different public records from the agency already in the public domain.

Appellant not being "connective" (*sic*) to the Emigration Improvement District public has no bearing on DDW's administration of its obligations at Utah Ann. Code, Title 63 G, General Government, [Chapter 2](#), Government Records and Management Act.

Appellant makes Utah Title § [63G-2-203](#)(6)(a) appeal to the chief administrative officer to make finding that Appellant's GRAMA request shall be fulfilled because of Utah Title § 63G-2-203 subsection § [63G-2-203](#)(4)(a) finding that, "releasing the record[s] primarily benefits the public rather than a person."

2.6 DDW's GRAMA Search-Associated Fees Are Illegitimate Because (I) DEQ Is a Title § 63J-1-504(1)(b) "Fee Agency" (Authorized to Establish Fees), and (II) DEQ's Purported Adopted Schedule of Fees for GRAMA-Associated Services Violate Title § 63J-1-504(3)(b) Prohibition on Creating, Changing, or Collecting Any Fee Unless the Fee Has Been Established According to the Procedures and Requirements of § 63J-1-504.

The Department of Environmental Quality (DEQ) is a Title § [63J-1-504](#)(b) "fee agency," inasmuch as Utah Ann. Code, Title 19, Environmental Quality Code,

§ [19-1-201](#)(5)(i)(i)-(ii) states:

19-1-201. Powers and duties of department -- Rulemaking authority -- Committee -- Monitoring environmental impacts of inland port.

...

(5) The department may:

...

(i)

(i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63J-1-504; and

(ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect the cost of services provided;

(j) ...

...

Statements by DDW Director Marie Owens in the December 6, 2019 [Exhibit 2] response letter by DDW Director Owens are basis for any reasonable person's inference that the fees and costs demanded of Appellant by DDW do not pass legitimacy tests at Title § [19-1-201](#)(5)(i)(i)-(ii), and Title § [63J-1-504](#)(3)(b).

DDW's December 6, 2019, estimate of costs and fees burden to Appellant presents no evidence that a Title § [19-1-201](#)(5)(i)(i) schedule of fees has been established by DDW.

DDW Director Marie Owens states:

"This work is expected to require significant time and resources, far in excess of \$50. The Division has limited staff and financial resources. The Division does not generally charge fees to water systems and is heavily dependent on funding through limited EPA grants. Existing Division staff availability is limited. In order to respond to the GRAMA Request, the Division will likely be required to rely on staff from other divisions, for which it will be required to pay outside of its normal budget."

Utah Ann. Code, Title 63 G, General Government, [Chapter 2](#), Government Records and Management Act, provides no foundation for DDW Director Owens' disregard of the plain language of the following subsections of GRAMA:

[63G-2-203](#). Fees.

- (1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer.
- (2) (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:
 - (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
 - (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
 - (iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
- (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request. *[Emphasis added.]***

Owen's cost and fees estimate to Appellant:

Searches for lead-related EIS documents stored on the DDW system:	\$462.96
DTS search for emails:	\$1,598.00
Screening of emails:	\$858.60
Electronic storage format (thumb drive)	<u>\$15.00</u>
Total	\$2,934.56

is illegitimate for reasons including:

- (i) the estimate omits a basis of the number of hours of labor for any work category; and,
- (ii) the estimate omits a basis of the § [63G-2-203](#)(2)(b) "lowest paid (qualified) employee" salary rate that may not be exceeded in assessing costs and fees to Appellant;

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request absent assessment to Appellant of the illegitimate costs and fees demanded of Appellant by DDW Director Owens [Exhibit 2].

2.7 DDW Director Marie Owens' Denial of Appellant's Fee Waiver Request Is Illegitimate Determination that Utah Code Ann. § 63G-2-203 Fee Waiver for Public Document Searches Has Benefit Increment Test beyond which Fee Waiver Request for the Public Documents Requested Shall Be Denied.

The December 6, 2019, response letter by DDW Director Owens [Exhibit 2] concedes that Appellant's GRAMA request form fee waiver request cited basis that "the request primarily benefits the public."

The plain language of Title § [63G-2-203](#), contains no foundation for Owens' preposterous reasoning that Appellant's fee waiver request was denied because the public already benefits from enough different public records about Utah public drinking water, and so the public does not need additional different benefit of the records that Appellant has requested be released with fee waiver. Owens ruled:

"The sole basis provided for this request is that the request primarily benefits the public. While it is true, as a general proposition, that matters relating to public water systems are in the public interest, the agency believes that it already provides adequate levels of information to the public, particularly persons who are connective (*sic*) to any given public water system, free of charge."

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request with deserved Utah Title § [63G-2-203](#)(4)(a) fee waiver because "releasing the record[s] primarily benefits the public rather than a person."

2.8 DDW Director Marie Owens' Denial of Appellant's Fee Waiver Request Is a Violation of Utah Code Ann. § 19-1-306(2)(b), Namely, Violation of Mandate that the Regulation of the United States Environmental Protection Agency Interpreting the Federal Freedom of Information Act, As It Appeared at 40 C.F.R. Part 2 on January 1, 1992, Applies to Records of the Department of Environmental Quality.

DDW Director Owen's cost and fees estimate to Appellant:

Searches for lead-related EIS documents stored on the DDW system:	\$462.96
DTS search for emails:	\$1,598.00
Screening of emails:	\$858.60
Electronic storage format (thumb drive)	<u>\$15.00</u>
Total	\$2,934.56

fails to document labor and materials (e.g., copy costs) for the specific line items. But, it is a reasonable inference that the underlying calculations are premised on rates and costs that exceed allowable amounts in Utah Code Ann. § [19-1-306\(2\)\(b\)](#) [see sidebar] and its cited, "[R]egulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992." That document caps costs and fees of document searches at \$20 per hour, and \$0.15 per page for document copies, respectively.¹

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request with deserved Utah Title § [63G-2-203\(4\)\(a\)](#) fee waiver, which is warranted instead of the otherwise maximum assessable fees and costs per Utah Code Ann. § [19-1-306\(2\)\(b\)](#), and certainly instead of Owens' demanded fees and costs.

¹ <https://deq.utah.gov/legacy/laws-and-rules/docs/2014/10Oct/40CFRPart2asof1192complete.pdf>

Title 19 Environmental Quality Code

Chapter 1, General Provisions

Part 3 Administration

Section 306 Records of the Department

19-1-306. Records of the department.

- (1) Except as provided in this section, records of the department shall be subject to Title 63G, [Chapter 2](#), Government Records Access and Management Act.
- (2) (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections [63G-2-305](#)(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section [63G-2-309](#), to the extent those records relate to a program:
- (i) that is delegated, authorized, or for which primacy has been granted to the state;
 - (ii) for which the state is seeking delegation, authorization, or primacy; or
 - (iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
- (b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).
- (3) (a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
- (b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.
- (4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections [63G-2-305](#)(1) and (2).
- (5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this section.

Amended by Chapter 382, 2008 General Session

<https://deq.utah.gov/legacy/laws-and-rules/docs/2014/10Oct/>

<https://deq.utah.gov/legacy/laws-and-rules/docs/2014/10Oct/40CFRPart2asof1192complete.pdf>

2.9 DDW Director Owens Invoked Illegitimate de Facto Policy that the Agency Can Assert that It Already Provides Adequate Levels of Information to the Public, and Therein May Deny GRAMA Requester Fee Waiver for Even Different Public Records Search Results Benefitting the Public.

DDW Director Owens' invocation of de facto Agency policy where the Agency's practices and conduct policies should have first been legitimized in statutory rulemaking process is without authority.

Consider:

- Neither Utah Code § [63G-2-203](#)(4) nor any other provision in GRAMA empowers DDW to establish policy instead of Utah Administrative Rule for evaluating requests for fee waivers under Utah Code § [63G-2-203](#)(4);
- Utah Code 63G-3, Utah Administrative Rulemaking Act, § [63G-3-201](#) When Rulemaking Is Required [see sidebar] , and specifically § [63G-3-201](#)(4)(c) ("rulemaking is not required when ... an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3)") [see sidebar], impeaches DDW's action to set GRAMA fee waiver "policy" where rulemaking, instead, is required;
 - That is, rulemaking rather than policy declaration is required per § [63G-3-201](#)(2), which requires that an agency shall make rules (not policy) when agency action (a) authorizes, requires, or prohibits an action; (b) provides or prohibits a material benefit; ... (d) is explicitly or implicitly authorized by statute;"

Title 63G, General Government

Chapter 3 Utah Administrative Rulemaking Act

Part 2 Circumstances Requiring Rulemaking - Status of Administrative Rules

Section 201 When rulemaking is required. (Effective 5/8/2018)

63G-3-201. When rulemaking is required.

- (1) Each agency shall:
 - (a) maintain a current version of its rules; and
 - (b) make it available to the public for inspection during its regular business hours.
- (2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
 - (a) authorizes, requires, or prohibits an action;
 - (b) provides or prohibits a material benefit;
 - (c) applies to a class of persons or another agency; and
 - (d) is explicitly or implicitly authorized by statute.
- (3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.
- (4) Rulemaking is not required when:
 - (a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or , except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties Protection Act, students enrolled in a state education institution;
 - (b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;
 - (c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or
 - (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.

...

Amended by Chapter 325, 2018 General Session

DDW's fee waiver denial policy is illegitimate because policy is illegitimate where Utah Administrative Rule, consistent with rulemaking procedure in Utah Code, is instead required.

GRAMA legitimizes a State agency's implementation of only GRAMA request **fee**, and not **policy**, such as fee waiver "policy," for which an agency must engage in rulemaking process before implementation.

Utah Title § 63G-2-203(1) states:

63G-2-203 Fees.

(1) A governmental entity may **charge** a reasonable **fee** to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer. *[Emphasis added.]*

Indisputably, agency implementation of GRAMA request fee waiver policy requires Utah Title § [63G-3-201](#) process because DDW denial of fee waiver for a GRAMA requester constitutes Utah Title § [63G-3-201](#)(2)(b) prohibiting by the agency of a material benefit to the requester.

Appellant appeals to the chief administrative officer to forthwith fulfill the November 4, 2019, Appellant's GRAMA request with deserved Utah Title § [63G-2-203](#)(4)(a) fee waiver because DDW Director Owens denied Appellant's fee waiver request on the foundation of illegitimate de facto Agency policy.

3 APPELLANT APPEALS HEREIN

Utah Code Ann., Title 19, [Chapter 4](#), the Utah Safe Drinking Water Act. This Act empowers the Drinking Water Board, at Title § [19-4-104](#)(i)v, to "protect[] watersheds and water sources used for public water systems." Utah Code Ann., Title § [19-1-105](#)(1)(a) empowers the Division of Drinking Water (DDW) to administer Title 19, [Chapter 4](#), the Utah Safe Drinking Water Act. Appellant's GRAMA request speaks to Appellant's quest to determine if there are corrupt practices within DDW by DDW management with respect to protecting public drinking water sources, and the public, from waterborne lead contamination.

Appellant appeals the December 6, 2019, Division of Drinking Water, Director Marie Owens, GRAMA request de facto denial [Exhibit 2] of November 4, 2019, Steven Onysko GRAMA request [Exhibit 1], to the Division of Drinking Water November 7, 2019, pursuant to applicable GRAMA appeal rights accorded Appellant at:

[63G-2-401](#). Appeal to chief administrative officer -- Notice of the decision of the appeal. [Effective 5/14/2019].

(1)(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section [63G-2-205](#), if the governmental entity denies a record request under Subsection [63G-2-205](#)(1); or

(ii) the record request is considered denied under Subsection [63G-2-204](#)(9), if that subsection applies.

Appellant appeals the DDW de facto GRAMA request denial to the chief administrative officer on multiple grounds, including:

- Appellant's fee waiver request was illegitimately denied;
- the Agency's demanded fees and costs are extortionate, with poorly-veiled intent to intimidate Appellant into forgoing his GRAMA request;
- the Agency's demanded fees and costs are illegitimate because specific language at Utah Code Annotated prohibits these illegitimate assessments; and,
- the Agency's demanded fees and costs are illegitimate because the Agency, a Utah government Title § [63J-1-504](#)(1)(b) "fee agency," has failed to comply with Utah Code Annotated procedures for establishment of fee policy, fees, and fee waiver policy, as, for example, GRAMA requests statutorily warrant;

4 RELIEF SOUGHT BY APPELLANT

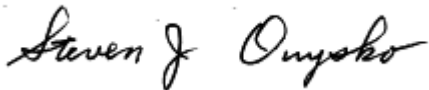
First, Appellant wants the Department of Environmental Quality (DEQ) chief administrative officer to supplement DDW's partial response of the table of "EID Lead Data Results" with the original laboratory reports for the summarized data.

Second, Appellant wants the Department of Environmental Quality (DEQ) chief administrative officer to rescind DDW Director Owens' denial of Appellant's fee waiver request. Indisputably, the records information requested by Appellant will benefit the public. Owens conceded such. But Owens nonetheless preposterously denied Appellant's fee waiver request for her illegitimate reason that DDW "already provides adequate levels of information to the public." That reason has no foundation in GRAMA.

Third, Appellant wants the Department of Environmental Quality (DEQ) chief administrative officer to have Appellant's requested document search completed for Appellant as quickly as possible, and to have DDW then accommodate Appellant's viewing access to the search results. The ongoing public health implications of possible lead contamination of public drinking water in the Emigration Improvement District public water system in years past, and maybe in the present, warrant DDW's complete fulfillment of Appellant's GRAMA request.

These three requests are reasonable and lawful. Obstruction by DDW in this GRAMA matter constitutes Utah Administrative Rules [R477-1-1](#)(76) nonfeasance ("[f]ailure to perform either an official duty or legal requirement."). Arguably, the obstruction also constitutes [R477-1-1](#)(70) malfeasance ("[i]ntentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities."), and [R477-1-1](#)(74) misconduct ("[w]rongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.").

Respectfully,

A handwritten signature in black ink that reads "Steven J. Onysko". The signature is written in a cursive, flowing style.

Steven J. Onysko
2286 Doc Holliday Dr.
Park City, UT 84060
435-214-9251 (daytime)
onysko5@burgoyne.com
January 3, 2020

Exhibit 1



UTAH DEPARTMENT of
ENVIRONMENTAL
QUALITY

Revised 8/16/2019

REQUEST FOR PUBLIC INFORMATION

Kaci McNeill, Records Officer kmcneill1@utah.gov
Mailing Address: P.O. Box 144810, Salt Lake City, UT 84114-4810
Physical Address: 195 North 1950 West, Salt Lake City, UT 84116
Phone: 801-536-0228 |

Date Requested:	11-4-19	Name of Requestor:	Steven Onysko
Company Name:	N/A		
Address:	2286 Doc Holiday Dr.	Phone Number:	435-214-9251
City/State/Zip:	Park City, UT 84060		
E-mail Address:	onysko5@burgoyne.com		

Records Requested:

Note: The more specific and narrow the request, the easier it will be for the agency or office to respond to the request. If you are unsure about the records' description, contact the agency or records officer.

Note: Government keeps records in "series" or groups of records. To find out what series an agency or office maintains, visit the Archives' website, <https://archives.utah.gov/>. The record series retention schedules on the Archives' website include relevant descriptions.

Title or series number of records (if known):

In accordance with the Government Records Access Management Act (GRAMA), I hereby request records including all relevant information-location of event(s) described in records, city, county, address, date range of the records; names of the person(s); and subject of request.

"If records are requested in an electronic format, be advised that In accordance with Utah Code Annotated 63G-2-201(8)(a)(iii), a governmental entity is not required to provide a record in a particular format, medium, or program not currently maintained by the governmental entity. Records will be made available in a format that allows us to respond to your request in the most timely and efficient manner. If you require the record to be provided in a particular format, it will be necessary for you to pay the actual costs associated with formatting the record in advance as provided for in Section 63G-2-203(2)(a)(iii)."

Requester requests viewing access to all records and documents relating to lead in, including but not limited to, lead contamination of, public drinking water in Emigration Improvement District, UTAH118141 Public Water System. This request includes, but is not limited to, (1) correspondence between DDW and EID, and to/from third parties to DDW and/or EID, including EPA, about lead presence in the drinking water provided by EID through final use locations of EID water users (e.g., information on detected lead both upstream and downstream of the EID drinking water service connections in the EID service area); (2) drinking water quality sample results for any detected lead presence in the EID source water and distribution system, as well as within residential or business property plumbing receiving EID drinking water; (3) DDW communications to EID, including, but not limited to, via-e-vie water quality violations, via-e-vie advice or directives or orders or action plans by DDW with respect to EID needed or required action for lead in the EID drinking water, etc.; or via-e-vie potential or actual health impacts of lead in the EID drinking water on EID drinking water users; and (4) any DDW documentation of EID responsibilities under the Safe Drinking Water Act, the Utah Safe Drinking Water Act, or any other public water system regulations, to inform EID public drinking water users of any lead in the drinking water served by EID.

Request Made To: (Check All that Apply)

- Department of Environmental Quality (All Divisions)
 - Division of Air Quality
 - Division of Drinking Water
 - Division of Environmental Response and Remediation
 - Division of Waste Management and Radiation Control
 - Division of Water Quality


Do you need this record for a news story or publication? Which channel or publication? Please explain.
 Not at this time.

I would like to:

- View or inspect the records only
- Receive a copy of the records and pay associated fees, Please notify me if the amount will exceed \$ _____
- Receive a copy of the records and request a fee waiver, according to Utah Code 63G-2-203, because:
 - A. Releasing the record primarily benefits the public
 - B. I am the subject, or authorized representative, of the record _____
 - C. My legal rights are directly implicated by the information of the record because _____

D. I wish to receive an expedited response (5 days) because releasing the records benefits the public; I request the information for a story or report for publication or broadcast to the general public. _____

The requestor's signature, required before a request can be completed, indicates that any charges will be paid by the requestor and that the requestor understands all copy options and fees. The requestor also states that the sensitive information and disclaimer statement has been read (on the Web site) and is understood.

Requestor Signature: Steven J. Onyko  Date: 11-4-2019

For Agency Use Only

Date Reviewed:		Approved By:	
Estimated Number of Copies:		Anticipated Delivery Date:	
Estimated Cost:		Cost Estimate By:	
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Date Mailed:		Mailed By:	
Total Number of Copies:		Copying Fee Due: \$	
Check: \$	Cash: \$	Receipt Number:	

Notified requestor that records are not maintained by this agency.

Extraordinary circumstances require extension time to:

Notified requestor of extension on:

[Larger font version of the request.]

Requester requests viewing access to all records and documents relating to lead in, including but not limited to, lead contamination of, public drinking water in Emigration Improvement District, UTAH18141 Public Water System. This request includes, but is not limited to, (1) correspondence between DDW and EID, and to/from third parties to DDW and/or EID, including EPA, about lead presence in the drinking water provided by EID through final use locations of EID water users (e.g., information on detected lead both upstream and downstream of the EID drinking water service connections in the EID service area); (2) drinking water quality sample results for any detected lead presence in the EID source water and distribution system, as well as within residential or business property plumbing receiving EID drinking water; (3) DDW communications to EID, including, but not limited to, vis-a-vis water quality violations, vis-a-vis advice or directives or orders or action plans by DDW with respect to EID needed or required action for lead in the EID drinking water, etc., or vis-a-vis potential or actual health impacts of lead in the EID drinking water on EID drinking water users; and (4) any DDW documentation of EID responsibilities under the Safe Drinking Water Act, the Utah Safe Drinking Water Act, or any other public water system regulations, to inform EID public drinking water users of any lead in the drinking water served by EID.

Exhibit 2



State of Utah
GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF DRINKING WATER
Marie E. Owens, P.E.
Director

December 6, 2019

Steven Onysko
2268 Doc Holiday Dr
Park City, UT 84060

Dear Mr. Onysko:

This is in further response to your Request for Public Information (GRAMA Request) dated November 4, 2019. The Division of Drinking Water (DDW) provided an Initial Response to the GRAMA Request on November 14, 2019. The Initial Response showed you how to access Emigration Improvement District (EID) records that have been published to the Department's website.

You provided a Reply to the Initial Response on November 17, 2019. The relevance and purpose of your Reply are not clear. We interpret your Reply to indicate that (1) most of the records on the EZ Search database do not relate to lead; (2) only two of the records relate to calendar year 2019; and (3) a request that the agency publish to the agency's website the annual consumer confidence reports from EID from 2016 to 2018. Notably, your reply did not attempt to further define or limit the GRAMA Request as to time.

Scope of GRAMA Request

The GRAMA Request is worded as follows:

Requester requests viewing access to all records and documents relating to lead in, including but not limited to, lead contamination of, public drinking water in Emigration Improvement District, UTA H18143 Public Water System. This request includes, but is not limited to, (1) correspondence between DDW and EID, and to/from third parties to DDW and/or EID, including EPA, about lead presence in the drinking water provided by EID through final use locations of EID water users (e.g., information on detected lead both upstream and downstream of the EID drinking water service connections in the EID service area); (2) drinking water quality sample results for any detected lead presence in the EID source water and distribution system, as well as within residential or business property plumbing receiving EID drinking water; (3) DDW communications to EID, including, but not limited to, vis-a-vis water quality violations, vis-a-vis advice or directives or orders or action plans by DDW with respect to EID needed or required action for lead in the EID drinking water, etc., or vis-a-vis potential or actual health impacts of

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144830 • Salt Lake City, UT 84114-4830
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lead in the EID drinking water on EID drinking water users; and (4) any DDW documentation of EID responsibilities under the Safe Drinking Water Act, the Utah Safe Drinking Water Act, or any other public water system regulations, to inform EID public drinking water users of any lead in the drinking water served by EID.

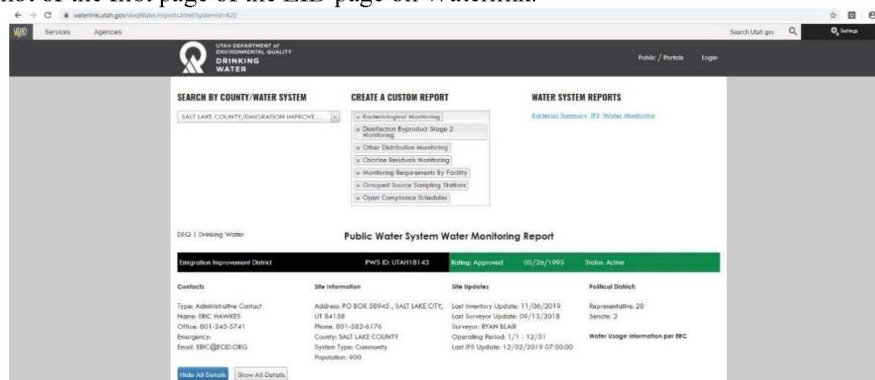
The Division notes that GRAMA does not require the agency to conduct research on your behalf, or to produce records that do not exist. Rather, the agency is required to conduct a reasonable search based on the request, classify public records identified through the request, and provide the requester with the records requested. In responding to a GRAMA request, the agency is allowed to charge reasonable fees for certain tasks associated with responding to the request.

In many respects, this GRAMA request is broadly worded and undefined. Under the GRAMA statute, a GRAMA request must be reasonably specific. According to and decisions by the Records Committee, the reason for the specificity requirement is to enable the agency to conduct a search. The agency is required to conduct a reasonable search. Phrases such as “including but not limited to” are not helpful in formulating a reasonable search.

After evaluating the GRAMA Request and the Reply, the agency has concluded that the most efficient searches related to the GRAMA Request will involve “Emigration Improvement District,” or “EID” or the associated water system number (18141). In short, the agency will interpret your request as seeking the following: **all public records relating to Emigration Improvement District (aka EID or 18143), which records also involve “lead.”** This search is reasonable and is calculated to capture the types of records referenced in the multiple “including but not limited” descriptions in the GRAMA Request, to the extent that such records exist.

Waterlink Database

In addition to the EZ Search mentioned in the Division’s Initial Response, the agency maintains a publicly- accessible database of all public water systems in the state. This database is known as Waterlink and is available online at: waterlink.utah.gov. The Waterlink database provides a variety of information types, including a current Improvement Priority System (IPS) report. The user has the ability to generate a number of customized reports. This information provides the user with current information about the water system’s regulatory status. Here is a screenshot of the first page of the EID page on Waterlink:



Some of the information requested in the GRAMA Request may be found on this database.

Initial Reasonable Search

The agency does not maintain records of water systems in a way that is organized by the topic of lead. Rather, the agency maintains records for public water systems based on other subject matters, including monitoring, surveys, violations, plan approval requests, loan requests, and so forth.

The agency has conducted an initial search of the types of records relating to Emigration Improvement District. The Division does not maintain traditional paper files. Generally, paper files relating to water systems that were previously maintained (1996 to 2008) have been scanned and are available only in pdf format that has not yet been formatted to allow for searching. As to the EID system in particular, the categories of electronic records that are available fall into several categories, including such areas as Correspondence and Construction Assistance. There is no file category for lead. Because of the nature of the categories, it is likely that several categories (such as capacity development) would not potentially include records relating to lead. In order to respond to the GRAMA Request, it will be necessary to search the records in these categories and determine which records, if any, relate to lead. This work is expected to take several hours of time, including the time necessary to convert the legacy files into searchable formats.

2016 to 2018 Consumer Confidence Reports

The Reply requests that the Division publish to the Division's website the EID's Consumer Confidence Reports for the years 2016 to 2018. The Division declines this request. There is nothing in GRAMA that requires the agency to publish any public records to a database. Under the Safe Drinking Water Act and Division rules, all public water systems are required to provide annual consumer confidence reports to all water users on the system. Thus, all users on the EID System have been provided those reports. Given the volume of records involved and the fact that they are provided to the relevant water users, the agency does not generally publish consumer confidence reports to its public database.

All of that being said, instead of publishing the referenced consumer confidence reports to the agency's database, the agency will interpret the Reply as a new GRAMA request for the reports. We have also included a copy of a specific, lead-related public notice that DDW required EID to provide to persons connected to the system. These are included under this cover, free of charge.

Lead Data

Public water systems provide raw technical data to the agency on a periodic basis. This data is entered into an EPA-shared database known as SIDWS. It would require extensive time for the agency to identify and produce all technical data submitted by EID over time. While the agency is willing to do so if required, the decision has been made to charge fees for this work, as discussed more fully below.

GRAMA does not require that the Division create records. GRAMA is intended to address requests for existing agency records rather than requests requiring the compilation of information to create a new record. A governmental entity is not required to: (i) create a record; (ii) compile, format, manipulate, package, summarize or tailor information; or (iii) provide a record in a particular format. *See Utah Code § 63G-2-201(8)(a).*

Notwithstanding these provisions of the code, as an accommodation, the agency has queried all data relating to lead on the EID system that exists in the agency's database. It is apparent that this is the substance of the information you are requesting to see. This information is included under this cover in an Excel spreadsheet format. This information is being provided free of charge and without waiving the agency's right to object to future requests that require the creation of new public records.

Email Records

Because the GRAMA Request is not limited in time, it implicates email records from a variety of current and former agency employees, some of whose identities are unknown to the agency at this time. The only way the agency has to search for these records is through the Department of Technical Services or DTS, the stage agency which has responsibility for agency emails. After consulting with DTS, the most reasonable way to find email records that are responsive to the GRAMA Request is for DTS to search, on a Department-wide basis (without respect to specific employees), for any and all records relating to "Emigration Improvement District," "EID," or "18143" which also include the word "lead."

DTS charges the agency for its time in performing email searches. In order to facilitate the evaluation of the possible fees associated with the GRAMA Request, the agency has requested that DTS perform an initial, screening-level search on DDW emails based on the search terms described above. DDW will be required to pay for this screening-level search. This initial, screening-level search identified about 344 MG of data (equating to about 745 items of email data). These emails are related to 34 separate DDW email accounts. In order to retrieve the actual emails, it will be necessary for DTS to search each email account, run the same search described above, pull out the responsive data, and convert it to .pdf format. DTS will charge DDW a minimum of \$47 per account for this search service. Based on the foregoing, the DTS fee to DDW is estimated to be about \$1,598.

Based on previous experience with DTS email searches, it is expected that a number of the emails retrieved through the DTS search will be "false positive" results, meaning that the email, upon review, has nothing to do with either EID or the topic of lead. As a result, prior to providing you with copies of responsive email records, it will be necessary to cull out records that are not related to the GRAMA Request. This step will likely require significant staff time. The lowest rate DDW staff member who is qualified to perform these tasks is \$33.49 per hour. Assuming that staff can review 25 emails per hour, this would equate to about 30 hours of work. If the rate were doubled, then this step would still require about 15 hours of time. This search step is not the same as classifying to records under GRAMA. Therefore, you will be billed for this step of the process. Classifying the records would occur after the culling stage and will not be billed.

In-Person Review

The GRAMA Request states that you desire to review the requested records in person. The request to review records in-person is denied for several reasons. First, the agency does not maintain traditional paper files of the requested records. Most of the records requested are stored in electronic format. Only authorized DDW employees are allowed to have access to the database system. Therefore, it is most efficient to produce these records in electronic format rather than print them for in-person review. Otherwise, it would be necessary to print all records to allow for in-person review, which is not reasonable or cost-effective. Second, the records must be reviewed and classified before they can be reviewed in any event. Aside from the hard copy records provided here, the agency has concluded that the most efficient and cost-effective way to produce records responsive to the GRAMA Request would be in electronic format saved to a thumb drive. If you still want to pursue in-person inspection, it will be necessary to charge you the cost of printing records that do not currently exist in paper format, in addition to the other fees described below.

While a governmental entity may not charge a fee to inspect a public record (Utah Code § 63G-2-203(5)(b)), the fee requested below does not relate to the inspection step. In order to provide you with physical copies of records to inspect in person at the Division, the Division expects to incur costs, within the meaning of Utah Code Section 63G-2-203(2), in excess of \$50. These costs would be unavoidable in order to provide records for in-person inspection.

Fee Waiver Request Partial Denial

The GRAMA Request includes a request for waive fees for the records. The sole basis provided for this request is that the request primarily benefits the public. While it is true, as a general proposition, that matters relating to public water systems are in the public interest, the agency believes that it already provides adequate levels of information to the public, particularly persons who are connective to any given public water system, free of charge. This free information includes:

1. Annual consumer confidence reports that all water systems must provide to water users on the system;
2. Public access to the records available on the EZ Search database described in the Initial Response;
3. Any public notice the Division requires a water system to provide to its users;
4. Public notices on the Division's website; and
5. Public access to the Division's Waterlink database, as described above.

After considering the fee waiver request and the scope of the GRAMA Request, the Division has decided to grant it in part and deny it in part, as follows. The fee waiver request is granted insofar as relating to the records and information produced under this cover. This includes the 2016, 2017, and 2018 EID consumer confidence reports and the EID historical lead data available from the Waterlink database. The fee waiver is also granted insofar as the initial, screening-level email search by DTS as described above. The Division will absorb the DTS charges for this initial search.

GRAMA allows a governmental entity to “charge a reasonable fee to cover the governmental entity’s actual cost of providing a record” that goes beyond the first quarter hour of time. *See* Utah Code § 63G-2-203(1). This includes the “cost of staff time for compiling, formatting, manipulating . . . or tailoring the record into an organization or media to meet the person’s request and the “cost of staff time for search, retrieval, and other direct administrative costs for complying with a request.” Utah Code § 63G-2-203(2)(a)(i)&(ii). While the Division is “encouraged” to waive fees if it makes certain determinations, as provided in Utah Code Section 63G-2-203(4), the Division has concluded that under the circumstances presented, the interests of waiving fees do not outweigh the agency’s interest in recovering its actual costs. The statute provides three elements to consider in a fee waiver request:

- (1) releasing the record primarily benefits the public;
- (2) the individual requesting the record is the subject of the record;
- (3) the requester’s legal rights are directly implicated by the information in the record, and the requester is impecunious.

Utah Code § 63G-2-203(4). As the Division understands the facts, you are not the subject of the records, nor are your legal rights directly implicated by the information in the records and you have not claimed to be impecunious.

After considering the fee waiver request, the Division is not willing to waive the recoverable fees relating to the other records that have been identified, or that may in the future be identified, in connection with the Division’s searches. This work is expected to require significant time and resources, far in excess of \$50. The Division has limited staff and financial resources. The Division does not generally charge fees to water systems and is heavily dependent on funding through limited EPA grants. Existing Division staff availability is limited. In order to respond to the GRAMA Request, the Division will likely be required to rely on staff from other divisions, for which it will be required to pay outside of its normal budget. Therefore, the Division is not persuaded that providing a fee waiver for the additional work that will be required to respond to the GRAMA Request is warranted. The Division has concluded that the information provided to date, free of charge, is adequate to satisfy the fee waiver provisions in GRAMA.

Fee Estimate

The estimated fees for further response to the GRAMA Request are expected to exceed \$50. As a result, the Division may require payment of estimated fees prior to processing the request. *See* Utah Code § 63G-2-203(8). The GRAMA Request is broad in scope and not limited in time. Until the searches are completed, it will be impossible to provide a complete estimate of the total fees that will actually be incurred. Based on available information, DDW expects the fees to be as follows:

Searches for lead-related EIS documents stored on the DDW system:	\$462.96
DTS search for emails:	\$1,598.00
Screening of emails:	\$858.60
Electronic storage format (thumb drive)	<u>\$15.00</u>
Total	<u>\$2,934.56</u>

Steven Onysko
Page 7 of 7
December 6, 2019

The records described above exist (or will exist) in .pdf format. It will be most efficient to provide these to you in electronic format. The cost estimate assumes production of records via a thumb drive. If you would prefer paper copies, you will be required to pay a \$.25 per-page copy fee in lieu of the thumb drive charge.

Based on the foregoing, the DDW requests that payment of estimated fees be paid in advance. DDW will not do more work on the GRAMA Request until the estimated fees are paid. Note that this is a fee estimate only. You will be responsible for actual charges. If the fee estimate is not adequate to cover actual costs, we will let you know if and when we have been information as to the scope of the document search process.

Appeal Rights

This letter may be considered a final agency decision as to your fee waiver request. The denial of a fee waiver request is not equivalent to the denial of access to the records requested. Responsive records will be made available as soon as the fees are paid.

If you feel we have not satisfied your request, an appeal may be made in accordance with Utah Code Section 63G-2-401. This appeal must be made within 30 days of receiving this document. Please email your request to Kim Shelley, Director of Operations at kshelley@utah.gov, or mail to:

Kim Shelley, Director of Operations
Department of Environmental Quality
195 North 1950 West
Salt Lake City, UT 84116

Sincerely,



Marie E. Owens, P.E., Director
Division of Drinking Water

Enclosures

1. Consumer Confidence Reports Referenced
2. EID Lead Data Results
3. EID Lead Notice