JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

March 14, 2011

Stan Sugarman
P.O. Box 1766
Coos Bay, OR 97420

Re: Petition for Review of Denial of Fee Waiver:
Oregon Water Resources Department Records

Dear Mr. Sugarman:

On March 7, 2011, we received your email asserting that a $681.78 fee estimated by the Oregon Water Resources Department (WRD) in response to your request for public records was unreasonable and effectively constituted a denial of your request. Your request effectively sought all records relating to the five most recent water rights revocation contested cases involving facts similar to your pending contested case.

The Oregon Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Under ORS 192.450, "any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection." Although "there is no provision in the Public Records Law that authorizes a person to petition the Attorney General to review an agency's fees established under ORS 192.440(4)," we have concluded that

> [our] authority to enforce the inspection provisions of the public records law may require the Attorney General to evaluate an agency's fees where the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) at § I.D.6.b.(1), available at http://www.doj.state.or.us/public_records/manual/public_records.shtml#d.

After speaking with WRD Deputy Director Tom Paul, we cannot find that your petition implicates our limited authority to review agency fees. Mr. Paul reports your current request requires WRD to identify responsive cases and review a significant volume of records. For example, Mr. Paul states that one of the cases responsive to your request is currently on appeal and the record in that case amounts to an approximately three-foot stack of documents that WRD would need to review for privilege and other exemptions. Mr. Paul also reports that Ruben Ochoa in the WRD office has continued to work with you on ways to narrow your request. These circumstances do not suggest to us that the fee estimate provided by WRD is unreasonable in relation to the nature of your request. As a consequence, we respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM2601419
c: Ruben Ochoa, WRD