June 25, 1981

Lee R. Wendelbo
264 Norton Rd.
Williams, OR 97544

Chris Wheeler
Deputy Water Resources Director
Water Resources Department
Mill Creek Office Park
555 - 13th Street NE
Salem, OR 97310

Re: Petition of Lee R. Wendelbo to require Water Resources Department to disclose an Interoffice Memo - Water Masters' statement concerning Water Right Transfer File No. T4764

Gentlemen:

This letter will serve as an Order for Review by the Attorney General under the provisions of ORS 192.450.

Mr. Wendelbo requested that the Water Resources Department produce a copy of an Interoffice Memo - Water Masters' statement concerning Water Right Transfer File No. T4764. A copy of the document at issue was submitted to this office, together with a letter of explanation by the Water Resources Department.

ORS 192.500(2)(a) provides as follows:

"(2) The following public records are exempt from disclosure under ORS 192-410 to 192.500:

"(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure;"

The Water Resources Department in its response to the petition stated in part as follows:

> "Disclosure of the contents of an incomplete memorandum could cause or permit misunderstandings or misrepresentation as to the probability or nonprobability of an application being approved on its merits. These applications are frequently involved with land sales and can constitute a significant part of the land value.
>
> . . . .
>
> "It is necessary and appropriate for this type of report by some staff members to be reviewed and discussed internally so that legal and factual points have an opportunity to be fully reviewed and considered before a field employee can properly make up his mind as to what his overall recommendation is. He needs the opportunity to even change his opinion as well as expand it without being bound to the first draft memo."

In our opinion the document sought to be produced is exempt from disclosure under the provisions of ORS 192.500(2)(a) in that it is a communication within a public body. The Water Resources Department has shown that "the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure."

The Water Resources Department recognized that after a decision has been completed on the application of Mr. Wendelbo, that decision will be available for disclosure from the Water Resources Department.

The Attorney General therefore denies the petition of Lee R. Wendelbo.

Sincerely

Clarence R. Kruger
Assistant Attorney General
and Counsel

CRK:mb