THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

September 25, 1996

Karl Anuta, Vice President
Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219

Robert S. Pierce, Law Clerk
Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219

Re: ***Petition for Public Records Disclosure Order: Department of Environmental Quality Records***

Dear Messrs. Anuta and Pierce:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on September 18, 1996,[1/] asks the Attorney General to direct the Department of Environmental Quality (DEQ) to make available: 1) documents verifying that DEQ has submitted to the Environmental Protection Agency final TMDLs on all of the water bodies referenced in the consent decree made pursuant to ***NEDC v. Thomas***, or 2) if TMDLs are not completed on all referenced water bodies, documents showing which ones have been submitted to EPA and why DEQ has not completed the water bodies referenced in the consent decree. For the reasons that follow, we respectfully deny your petition.

According to a letter from Susan Greco, DEQ Rules Coordinator, to Karl Anuta dated September 23, 1996, DEQ has agreed to release the records that you requested. Some of these records were apparently sent to you with Ms. Greco's letter. Ms. Greco's letter further states that the agency is attempting to locate other records that may exist. We have

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[1/] We received the petition on September 18, 1996, but without any attachments; we received the complete petition on September 19, 1996.

confirmed with Ms. Greco that these additional records will be sent to you once they are located or that you will be notified promptly if the agency determines the records do not exist.[2/]

Absent a denial of a records request by a state agency, the Attorney General has no authority to order disclosure of the records. *See* ORS 192.450(1). Because DEQ has not denied your request for the records, but agreed to release those records to you, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

ESH:LJK:AV:kt/JAA0206E

c: Susan Greco, DEQ

[2/] This office cannot order an agency to disclose records that do not exist. Moreover, the Public Records Law does not impose on public bodies the duty to create public records in order to disclose "knowledge" their staff might have. OREGON PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 5.