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Justice Building
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Telephone: (503) 378-4400

June 8, 1988

Larry Caldwell
Route 5, Box 5945 #5
Hermiston, Oregon 97838-9671

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

Dear Mr. Caldwell:

This letter is the Attorney General's order on your Public Records Law petition for disclosure of documents of the Department of Environmental Quality (DEQ). Your petition, dated June 2, 1988, was received by the Attorney General's office on June 6, 1988. You ask the Attorney General to order the DEQ to disclose a state groundwater survey administered by the United States General Accounting Office (GAO) in late 1986.

We respectfully deny your petition, because the DEQ does not have custody of a copy of its responses to the GAO survey or a copy of the survey results issued by the GAO. The Public Records Law imposes a duty to disclose non-exempt public records on the "custodian" of those records. ORS 192.430. The DEQ does not have custody of the documents you wish to inspect, and we decline the invitation to order the DEQ to disclose documents it does not have.

We do note, however, that DEQ has offered to secure a copy of the survey and provide it to you. Mr. Gary Pettit of the DEQ believes that a copy of the document you wish to inspect can be obtained from nearby federal Environmental Protection Agency offices. We are informed that Mr. Pettit will contact you about this matter.

In sum, we deny your Public Records Law petition, but commend the DEQ for offering to attempt to obtain a copy of the federal government record you wish to inspect. If the DEQ is

unable to obtain that record for you, the agency should refund the money you prepaid to cover the agency's actual expenses in making disclosure.

If you have any questions, please contact Mr. Pettit at the DEQ or Assistant Attorney General Michael B. Huston at 229-5725.

Respectfully submitted,

James E Mountain Jr.

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Gary Pettit, DEQ
Michael B. Huston, Assistant Attorney General
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