

June 8, 2006

Rule Coordinator  
Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271

RE: Comments, Division 2 Protests and Contested Cases and Division 3 Public Records Requests,

Dear Water Resources Department,

Thank you for the opportunity to comment on the draft Division 2 and 3 rules. WaterWatch is a non-profit river conservation group dedicated to protecting and restoring natural flows to Oregon's rivers and streams for fish, wildlife, recreation and a sound economy. Our comments to specific sections of the proposed rules are outlined below.

### **Division 2--Protests and Contested Case Hearings**

#### Definitions, 690-002-0010:

**(6) Protest:** the proposed definition curtails public participation in agency actions by inserting the language "under applicable law" in defining who may file a protest. We oppose this proposed amendment because it is inserting language that, as a practical matter, interjects a ban on the public's ability to file protests that is not found in the statutes. Given that water is a public resource, the public should not be denied the right to file administrative appeals opposing an agency decision unless it is explicitly prohibited from doing so by a specific statute. Statutory silence cannot be construed as a ban against protests, yet that is exactly what the WRD is proposing to do.

The WRD is attempting to exclude the public from protesting via a definitional change in the rule.<sup>1</sup> This is not the appropriate venue to decide this issue. If there are existing ambiguities in statute, the matter should be decided either in the Legislature or the courts. The WRD should delete the words "under applicable law."

### **Division 3--Public Records Requests**

Location of filing, OAR 690-003-0140(4): The proposed rules limit the type of public records request at the Department field offices to water rights information available on the WRD web, maps and well logs. Any other information that the public wishes to obtain via public records request must go through Salem.

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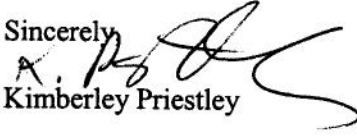
<sup>1</sup> The public notice in this rulemaking states that the purpose of the Division 2 rules was to bring the agencies rules related to protests and contested case hearings to be consistent with the Attorney General's Model Rules of Procedure. This proposed change goes beyond the scope of the rulemaking.

While we are sensitive to the WRD's desire for central control of agency material, WaterWatch is concerned that this limitation will prevent timely access to the field office material and/or otherwise stymie public access to certain materials. We also are concerned that agency transparency might be compromised by mandating central control of information housed at the field office.

We suggest this limitation simply be deleted.

Thank you for the opportunity to comment.

Sincerely,

  
Kimberley Priestley