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BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

IN THE MATTER OF THE REQUEST FOR)	
AMENDMENT #2 OF THE SITE CERTIFICATE)	FINAL ORDER ON
FOR THE SOUTH MIST PIPELINE EXTENSION)	AMENDMENT #2
)	

The Energy Facility Siting Council

December 5, 2003

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**SOUTH MIST PIPELINE EXTENSION
AMENDMENT #2
FINAL ORDER**

I. INTRODUCTION

The Energy Facility Siting Council (“EFSC” or “the Council”) issues this order in accordance with ORS 469.405, OAR 345-027-0070 and OAR 345-027-0080. This order addresses a request by Northwest Natural Gas (NWN) for amendment #2 of its site certificate for the South Mist Pipeline Extension (SMPE).

The Council issued the site certificate for the SMPE on March 13, 2003 and amended it on August 28, 2003. In its request for amendment #2 NWN requests a new limited water license for water from the Willamette River to be used in hydrostatic testing, and a new discharge location under its Water Pollution Control Facilities (“WPCF”) permit for discharge of water used in hydrostatic testing. The limited water license is governed by rules of the Oregon Water Resources Department (“WRD”) and the WPCF permit is governed by rules of the Department of Environmental Quality (“DEQ”). For this energy facility, both permits are under EFSC jurisdiction. ORS 469.401(2).

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order. In this order the term “corridor” means the 200-foot wide corridor for the SMPE, as approved by the Council on March 13, 2003 and amended on August 28, 2003.

II. PROCEDURAL HISTORY and EXPEDITED REVIEW

NWN submitted the request to amend the site certificate to the Office of Energy (“OOE” or “the Office”) on September 15, 2003. Pursuant to OAR 345-027-0080(1), NWN asked the Council Chair to grant expedited review. The Vice-Chair granted expedited review in a letter to David Stewart-Smith dated September 18, 2003. Expedited review was warranted because:

- i. Start of construction was delayed until late August, and most construction activities must be complete before the rainy season. This created a very short construction window. The delay in start of construction was caused by several factors including the length of the siting process, the appeal of the site certificate, difficulties in securing easements, and the need to request Amendment #1 to the site certificate to allow for adequate workspace. These factors were outside NWN’s control and NWN could not reasonably have anticipated them in time to request this amendment through the normal process.
- ii. The water use and discharge permits are needed to hydrostatically test the pipe and for directional drilling. The hydrostatic test requires 1.5 million gallons of water.
- iii. Because of the late start and short construction season, NWN can only build the southern most 11.7 miles in 2003, which places them well short of their existing water diversion point and discharge point at the Willamette. Trucking this much water from the approved diversion point and removing it to the approved discharge point would require 40 days, which would exceed the available construction window.

1 iv. NWN sought alternatives for water diversion and discharge that would not require amendment,
2 but none were available. NWN has therefore requested an alternate water source and
3 discharge point for that southern 11.7 miles.
4

5 On September 15, 2003 OOE issued notice to the Council's mailing list and the list of property
6 owners defined at OAR 345-021-0010(f). The notice stated where the public could review NWN's
7 amendment request and set a comment deadline of September 29. OOE also issued notice of
8 NWN's request to the agencies, tribes and governments listed in OAR 345-002-0040 and asked for
9 comments by September 29. The Office received only one public comment, which is discussed in
10 section V of this order. Section IV.C of this order includes the comments of WRD and DEQ.
11

12 On September 30, 2003 OOE issued a proposed order recommending approval of this
13 amendment, with conditions. Pursuant to OAR 345-027-0080(4), OOE issued notice of the
14 proposed order and of a meeting on October 8, 2003 at which the Council considered the proposed
15 order. The notice set an October 7, 2003 deadline for public comments on the proposed order.
16

17 On October 8, 2003, the Council issued a temporary order approving the request, pursuant to
18 OAR 345-027-0080(5). The public notice stated that the deadline to request a contested case on the
19 temporary order was October 23, 2003. No member of the public commented or requested a
20 contested case.
21

22 In reviewing the proposed amendment, the Council applies the same standards that it would
23 apply under OAR 345-027-0070(9). The Council applies the applicable substantive land use
24 criteria in effect on the date NWN submitted the request for amendment and all other state statutes,
25 administrative rules and local government ordinances in effect on the date the Council issued this
26 order.
27

28 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

29 **A. Description of the Facility**

30 The SMPE is a 24-inch diameter natural gas transmission pipeline, approximately 62 miles in
31 length. The site of the facility is a 200-foot wide corridor. NWN can locate the pipeline anywhere
32 within the corridor, subject to conditions. The corridor's northernmost point is a NWN valve
33 station ("Bacona") near the Washington-Columbia county border. It travels south through Dairy
34 Creek Valley, and proceeds south and east along mostly rural roads and property lines just west of
35 North Plains, Hillsboro, Sherwood and Wilsonville, crossing the Willamette River at a point near
36 Graham Road in Clackamas County. South of the Willamette River the corridor proceeds south and
37 east along rural roads and property lines until its southernmost point at the Williams Company's
38 Molalla Gate Station near the intersection of Barnards and Dryland roads.
39
40

41 Conditions under the Land Use Standard limit the pipeline's permanent easement and temporary
42 construction easements. Amendment #1, issued on August 28, 2003, allowed NWN to use extra
43 workspace and access roads at specific locations.
44

45 As issued, the site certificate includes limited water license LL491 authorizing NWN to
46 withdraw water for construction and testing from the Willamette River at a specified diversion
47 point. The site certificate also includes a WPCF permit under DEQ regulations, authorizing NWN
48 to discharge the water at specified locations. The most southerly location is on the south bank of
49 the Willamette.

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B. Changes to the Facility Proposed by NWN

Proposed amendment #2 does not change the approved site or affect the pipeline’s location, construction specifications or mitigation measures. The scope of the amendment is limited to the Limited Water License administered by WRD and the WPCF discharge permit administered by DEQ. As originally approved in March of 2003, these permits include a diversion point and discharge point on the banks of the Willamette River.

NWN uses the water for hydrostatic testing. For trench installation, NWN can place the pipe in the trench and then perform the hydrostatic test. But for underground bores, NWN must test the pipe before pulling it through the bore. The timing of the test is therefore a key milestone for subsequent construction.

Because construction activities are very limited once the rainy season begins, NWN can only build the southern 11.7 miles of the pipeline during fall 2003 (between the Molalla Gate Station and the Columbia Helicopter facility on Arndt Road, west of Canby.) This section includes several underground bores including the bore under the Pudding River. The site certificate, as issued, includes no water source or discharge point close to this segment of the corridor. NWN designed the SMPE to be tested in three segments. The southern segment includes the stretch between the Willamette River and the Molalla Gate Station. In a full construction season, NWN could build the pipeline to the Willamette River and use the pipe itself to carry water for the hydrostatic tests. This is precluded by the short construction window available in 2003.

In this amendment, NWN requested a limited license to divert up to 2 million gallons from the Willamette, to be diverted at a marina near where Boone’s Ferry Road reaches the south bank of the Willamette. No new facility is needed because NWN would withdraw the water from the river and connect the pump to an already existing 12-inch pipe that is unrelated to the SMPE.

NWN also requested a new discharge point, within the approved corridor. The discharge point that NWN requested on September 15th was a ravine on property located on the east side of Airport Road, across the road from Aurora Airport. The ravine drains to the Pudding river from the west.

Due to problems encountered during pipeline construction, NWN subsequently determined that the ravine on the west side of the river was not a feasible discharge location. NWN determined that a property on the east bank of the Pudding River was more suitable for the discharge, and requested that the proposed amendment be modified to authorize the discharge at the new location on the east bank¹. The discharge point on the east bank of the river is within the approved corridor. The property on the east side of the Pudding is the basis for consideration of this amendment.

C. Changes to Site Certificate Proposed by NWN

NWN proposed language stating:

“This amendment #2 to the SMPE Site Certificate authorizes NWN to divert up to 2 million gallons of water for hydrostatic testing and construction of the SMPE from an additional site in the Willamette River identified on the figure in the Limited Use License application. NWN is further authorized to discharge up to 1.5 million gallons of hydrostatic testing water

¹ September 30, 2003 letter from Michael Hayward, NWN, to Adam Bless, OOE.

1 within a straw bale enclosure at an additional site on Parcel # SMPCL-93.00 within the 200
2 foot corridor, identified in the figure in the Water Pollution Control Facility application.
3 The authorizations permit the diversion of water from October 1, 2003 until November 15,
4 2003 and permit the discharge of water from October 15, 2003 until November 30, 2003.”
5

6 NWN also proposed a single condition of approval:
7

8 “NW Natural shall terminate the discharge of hydrostatic testing water at the location
9 approved in Amendment No.2 by December 1, 2003.”
10

11 The application that NWN submitted to OOE on September 15, 2003 requested the limited
12 water use license until November 15, 2003. The application for limited water use that NWN
13 submitted to WRD requested that the diversion be available until November 2004. In a letter dated
14 September 24, 2003 from Ron Gullberg to Adam Bless, NWN subsequently clarified that it wishes
15 to have water available for construction in spring of 2004, and requested that the proposed condition
16 be amended. The request for WPCF discharge permit remains limited to November 30, 2003.
17

18 After submitting the amendment request, NWN encountered problems with the bore under the
19 Pudding River. Based on these problems, NWN determined that the discharge location at the
20 property on Airport Road, west of the Pudding River, was no longer suitable. NWN requested a
21 different discharge location on the east bank of the Pudding River. The location on the east bank of
22 the Pudding River is within the approved corridor.
23

24 **IV. FINDINGS ON COMPLIANCE WITH STANDARDS**

25
26 Under the General Standard of Review, OAR 345-022-0000(1), to issue the requested
27 amendment the Council must determine that it complies with:

- 28 a) standards adopted by the Council pursuant to ORS 469.501,
29 b) other Oregon statutes and administrative rules identified in the project order, excluding those for
30 which the federal government has delegated the decision on compliance to a state agency other
31 than the Council, and
32 c) statewide planning goals as provided in OAR 345-022-0030
33

34 The permitting requirements of state agencies other than the Council applicable to the SMPE
35 include the Limited Water License administered by WRD and WPCF permit administered by DEQ.
36 These permits are the subjects of the proposed amendment. The site certificate also includes a
37 Removal/Fill (wetlands) permit administered by the State Lands Division, but this amendment does
38 not affect that permit.
39

40 **A. Council Standards in OAR Chapter 345 Division 22**

41 42 **1. Organizational Expertise OAR 345-022-0010**

43 *(1) To issue a site certificate, the Council must find that the applicant has the organizational*
44 *expertise to construct, operate and retire the proposed facility in compliance with Council*
45 *standards and conditions of the site certificate. To conclude that the applicant has this expertise,*
46 *the Council must find that the applicant has demonstrated the ability to design, construct and*
47 *operate the proposed facility in compliance with site certificate conditions and in a manner that*

1 protects public health and safety and has demonstrated the ability to restore the site to a useful,
2 non-hazardous condition. The Council may consider the applicant's experience, the applicant's
3 access to technical expertise and the applicant's past performance in constructing, operating and
4 retiring other facilities, including, but not limited to, the number and severity of regulatory
5 citations issued to the applicant.

6 (2) The Council may base its findings under section (1) on a rebuttable presumption that an
7 applicant has organizational, managerial and technical expertise, if the applicant has an ISO
8 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility
9 according to that program.

10 (3) If the applicant does not itself obtain a state or local government permit or approval for
11 which the Council would ordinarily determine compliance but instead relies on a permit or
12 approval issued to a third party, the Council, to issue a site certificate, must find that the third
13 party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that
14 the applicant has, or has a reasonable likelihood of entering into, a contractual or other
15 arrangement with the third party for access to the resource or service secured by that permit or
16 approval.

17 (4) If the applicant relies on a permit or approval issued to a third party and the third party
18 does not have the necessary permit or approval at the time the Council issues the site certificate,
19 the Council may issue the site certificate subject to the condition that the certificate holder shall
20 not commence construction or operation as appropriate until the third party has obtained the
21 necessary permit or approval and the applicant has a contract or other arrangement for access to
22 the resource or service secured by that permit or approval.

23 Discussion

24
25
26 In its Final Order on the ASC, the Council found that NWN met the Organizational Expertise
27 standard based on its previous pipeline experience, the experience of managers and engineers
28 associated with the project, and favorable regulatory history with the Oregon Public Utilities
29 Commission. This amendment does not involve any change in NWN's organization or personnel.
30 Nor does it alter the scope of the project in a way that might require additional expertise or
31 experience. As the applicant points out, the Council has already approved three other diversion
32 points and discharge points within the corridor, including one at the Willamette River.
33

34 Sections (3) and (4) of the standard do not apply because the SMPE does not require any third
35 party permits because NWN will obtain all permits directly.
36

37 Conclusion

38 The Council finds that the proposed amendment complies with the Organizational Expertise
39 Standard. No changes to conditions are required.
40

41 2. Structural Standard OAR 345-022-0020

42 To issue the amendment, the Council must find that:

43 (a) The applicant, through appropriate site-specific study, has adequately characterized the
44 site as to seismic zone and expected ground motion and ground failure, taking into account
45 amplification, during the maximum credible and maximum probable seismic events; and

1 (b) The applicant can design, engineer, and construct the facility to avoid dangers to human
2 safety presented by seismic hazards affecting the site that are expected to result from all maximum
3 probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide,
4 liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

5 (c) The applicant, through appropriate site-specific study, has adequately characterized the
6 potential geological and soils hazards of the site and its vicinity that could, in the absence of a
7 seismic event, adversely affect, or be aggravated by, the construction and operation of the
8 proposed facility; and

9 (d) The applicant can design, engineer and construct the facility to avoid dangers to human
10 safety presented by the hazards identified in subsection (c).

11 12 Discussion

13 In its Final Order approving the SMPE, the Council found that the SMPE satisfies the
14 Structural Standard. (See Final Order, at 11-15; Attachment C, at 9-18.) The proposed
15 amendment does not change the location of the pipeline or any of the design, construction or
16 surveillance measures recommended to achieve compliance. Nothing in the proposed amendment
17 alters the basis for the Council's finding of compliance with the standard.

18 19 Conclusion

20
21 The Council finds that the proposed amendment complies with the Structural standard. No
22 changes to conditions are required.

23 24 3. Soil Standard OAR 345-022-0022

25
26 To issue the amendment, the Council must find that

27 ****the design, construction, operation and retirement of the facility, taking into account*
28 *mitigation, are not likely to result in a significant adverse impact to soils including, but not limited*
29 *to, erosion and chemical factors such as salt deposition from cooling towers, land application of*
30 *liquid effluent, and chemical spills.*

31 In the ASC for the facility, NWN stated that: "Project impacts such as the use of access
32 roads, staging areas, and pipe assembly areas for horizontal directional drilling may extend beyond
33 the boundaries of the 200-foot corridors." (ASC Exhibit I at I-2.) Therefore, the analysis area for
34 soil impacts in the ASC extended the full 200 foot width and beyond. The proposed discharge point
35 is within the corridor and therefore was analyzed for soil impact in the Final Order.

36 The Final Order and the Proposed Order concluded that NW Natural provided an extensive
37 and detailed plan for mitigating soil impacts, accounting for the major sources of soil damage. As
38 conditioned, the Council found that the SMPE satisfies the Soil Protection Standard. (See Final
39 Order at 15-18, 64; Attachment C at 31.)

40 The proposed change in water source and diversion point has no impact on soils. The water
41 use is the same as originally permitted, and only the diversion point is changed. The WPCF
42 discharge permit includes measures to ensure that the discharge does not increase erosion or
43 adversely affect groundwater. The request for DEQ permit includes consideration of the water
44 quality, groundwater and soil type, and the permit requires measures (geotextile or other material)

1 to disperse and filter the discharge to prevent erosion. As noted in the request to DEQ, the water
2 used is river water. The pipe interior contains no chemicals, oils or solvents, so that the discharge
3 water is unchanged from the water at the source. Exhibit 3 of the application request includes test
4 data for water samples taken prior to and during discharge of a hydrostatic test. The data shows that
5 copper levels were about 1% of the EPA's action level for copper. Trace amounts of iron and
6 manganese were detected but DEQ has indicated no concern with these metals at these
7 concentrations. The only change from the existing WPCF permit is the location of the discharge.

8 On August 28, 2003 the Council changed this standard to include consideration of
9 retirement impacts. NWN described the method of retirement for the SMPE in Exhibit W of the
10 ASC. The impacts are minimal because NWN would not remove the pipe but would cut and cap
11 the pipe at each end, purge with nitrogen, remove surface equipment such as valves and pig stations,
12 and cut and plug the pipe in 5 mile increments. None of these retirement actions are affected by the
13 proposed amendment. The scope of this amendment is limited to water used for construction.
14 Therefore the findings of compliance with the Soil Standard as it existed before August 28, 2003 are
15 not affected by the change in standard.

16 17 **Conclusion** 18

19 The Council finds that the proposed amendment complies with the Soil Protection Standard. No
20 further conditions are required.
21

22 **4. Land Use Standard OAR 345-0222-0030**

23
24 To issue the amendment to the site certificate, the Council must find that:
25

26 *ORS 469.503(4) the facility complies with the statewide planning goals adopted by the Land*
27 *Conservation and Development Commission.*

28 *ORS 469.504(1) A proposed facility shall be found in compliance with the statewide*
29 *planning goals under ORS 469.503(4) if:*

30 ***

31 *(b) The council determines that:*

32 *(A) The proposed facility complies with applicable substantive criteria from the affected*
33 *local government's acknowledged comprehensive plan and land use regulations that are required*
34 *by the statewide planning goals and in effect on the date the application is submitted, and with*
35 *any Land Conservation and Development Commission administrative rules and goals and any*
36 *land use statutes directly applicable to the facility under ORS 197.646(3)***.*

37 38 **Discussion**

39 The amendment includes:
40

- 41 1. a new diversion point for water for short-term hydrostatic testing of the SMPE, on the
42 Willamette River at a location outside of the approved corridor and zoned Rural
43 Residential Farm Forest Five Acre (RRFF-5) in Clackamas County; and
44

- 1 2. a new short-term location for discharge and reuse of water used for testing the SMPE, on
2 land within the approved corridor and zoned for Exclusive Farm Use (EFU) in
3 Clackamas County near the Pudding River.
4

5 **Water Diversion for Short-Term Testing** 6

7 In its Final Order, Attachment A, the Council found that the SMPE complies with the applicable
8 substantive criteria from acknowledged land use plans of Washington, Clackamas and Marion
9 Counties. The Council also found in Attachment B of the Final Order that the SMPE was permitted
10 in the EFU zone under ORS 215.275 as a utility facility necessary for public service. The diversion
11 and discharge of water for short-term hydrostatic testing in conjunction with the initial operation of
12 the facility were part of the original description in the Application for Site Certificate, but at
13 different locations.
14

15 a. RRFF-5 Zone in Clackamas County 16

17 Utility facilities are not listed as a permitted use in the RRFF-5 zone in Clackamas County.
18 As a result, pursuant to ORS 469.504(1)(b)(B), the Council approved the portion of the SMPE
19 within this zone based on Goal Findings (Final Order, Attachment A pp.44-49). In the RRFF-5
20 zone, the proposed amendment would authorize the short-term use of a float pump to divert water
21 for testing of the gas pipeline. The location of the new diversion point, as described above, is at a
22 marina near where Boone's Ferry Road reaches the south bank of the Willamette River. There are
23 no Goal 3, 4, or 5 resources or uses at this location. The use of water for testing will be done
24 subject to a Water Pollution Control Facilities permit already issued by the Oregon Department of
25 Environmental Quality (DEQ) and, as a result, the proposed use is consistent with statewide goal 6.
26 In addition, as the proposed use is short-term and at the location of an existing marina, the proposed
27 use is consistent with Goal 15. Finally, the Council incorporates by reference its prior findings that
28 the SMPE, including the short-term diversion of water from the Willamette for hydrostatic testing,
29 complies with all applicable provisions of the Statewide Planning Goals. SMPE, Final Order,
30 Attachment A, at 43-49.
31

32 b. Temporary Use 33

34 In addition, and in the alternative, the Clackamas County Zoning Code ("CCZO") section
35 1204.1 authorizes temporary uses in the RRFF-5 zone for a period not to exceed one year. The
36 Council also finds that the proposed diversion and use of water from the Willamette River is
37 allowed as a temporary use, based on the following specific findings under section 1204.1 of the
38 CCZO:
39

- 40 1. *The use for which a temporary permit is requested is not listed as permitted, accessory, limited*
41 *or conditional use in the underlying zoning district;*
42

43 Neither a utility facility, pipeline, nor any use associated with the diversion of water for
44 hydrostatic testing is listed as a permitted, accessory, limited or conditional use in the RRFF-5 zone.
45 As a result, the Council finds that the proposed diversion satisfies this requirement.
46

- 47 2. *There is no reasonable alternative to the temporary use;*
48

49 As noted in Section II of this order, NWN sought alternative methods to accomplish the
50 hydrostatic testing and found no reasonable ones available. The hydrostatic test is required by

1 federal safety code. Use of water from the already permitted diversion point was not possible
2 because the short construction window and the limitation on construction in the rainy season make
3 it impossible to use the existing diversion point. Trucking water would take more time than the
4 construction season permits. NWN considered using water from the Pudding River at a location
5 within the corridor, but the Water Master determined that the Pudding lacked sufficient quantity of
6 water. The existing 12-inch pipe is the only practical method of transporting the water from the
7 Willamette River to the site. As a result, the Council finds that this requirement has been met.
8

9 *3. The permit will be necessary for a limited time;*

10
11 Section 1204.01 of the CCZO limits the length of time a temporary use may be authorized for
12 up to one year. The authorization provided under this second amendment will be limited to one
13 year. As a result, the Council finds that this requirement will be met, and imposes a condition to
14 ensure that it is.
15

16 *4. The temporary use will not include the construction of a substantial structure or require a*
17 *permanent commitment of the land; and*
18

19 NWN will use a floating pump and will connect the discharge to an existing 12-inch pipe. No
20 permanent or substantial structures will be erected and there will be no permanent commitment of
21 land. As a result, the Council finds that this requirement will be met.
22

23 *5. The temporary use will not have a materially adverse effect on the surrounding area.*
24

25 NWN will use a floating pump, which they will remove once the test is finished. The pump will
26 have screens approved by ODFW for fish protection. No other materially adverse effects on the
27 surrounding area have been identified. As a result, the Council finds that the diversion point meets
28 the criteria for a temporary use in Clackamas County RRF-5 zone.
29

30 Based on the foregoing findings of fact and conclusions of law, the Council finds that the
31 proposed short-term diversion facility for withdrawing water from the Willamette River for
32 hydrostatic testing of the southern portion of the SMPE complies with ORS 469.503(4); 469.504;
33 and OAR 345-022-0030.
34

35 **Discharge and Reuse Associated with Short-Term Testing**

36 EFU zone in Clackamas County

37
38
39 The proposed short-term location for discharge and reuse of water used in hydrostatic testing
40 of the southern portion of the SMPE is east of the Pudding River in Clackamas County, in an area
41 zoned for exclusive farm use. The water would be land-applied to land in current farm use for the
42 purpose of irrigating nursery stock.
43

44 a. ORS 215.283(1)(y)
45

46 ORS 215.283(1)(y) authorizes the land application of reclaimed water, agricultural or
47 industrial process water when done subject to a permit from DEQ. The proposed reuse of test water
48 for irrigation of nursery stock has already been authorized under a WPCF permit issued by DEQ.
49 As a result, this use qualifies as a use permitted on EFU lands so long as the applicable
50 requirements of ORS 215.246 to 215.251 are met.

1
2 The primary requirement of these statutes is that DEQ determine that the application rates
3 and site management practices for the land application of reclaimed water ensure the continued
4 agricultural production and do not reduce the productivity of the tract. DEQ has made the required
5 determination². In addition, these statutes require an applicant to show that it has considered any
6 alternatives identified in public comments. At this time, no alternatives have been identified in
7 public comment and, as noted above, the applicant has considered reasonable alternative to the
8 proposed discharge and reuse of water used in testing, and there are no reasonable alternatives. For
9 these reasons, the Council finds that that proposed short-term discharge and reuse of water used in
10 testing is authorized under ORS 215.283(1)(y).

11
12 b. Compliance with ORS 215.283(1)(d); 215.275

13
14 In the alternative to findings regarding this use as the reuse of reclaimed water under ORS
15 215.283(1)(y), the proposed discharge also is permitted as a utility facility necessary for public
16 service under ORS 215.275. As demonstrated by the materials submitted by the applicant, the
17 discharge location is the only feasible location in reasonable proximity to the approved corridor for
18 the SMPE. There is no non-EFU zoned land in the vicinity of the proposed location, and the
19 proposed discharge is necessary for the hydrostatic test, which is required by federal safety codes at
20 49 CFR 192. The discharge is locationally-dependent because the water must be discharged in
21 close proximity to the hydrostatic test site. As explained above, NWN sought ways to truck or
22 otherwise transport the water to the already approved discharge site, but found no reasonable
23 alternatives. Finally, the proposed reuse of water will support an existing nursery operation by
24 providing irrigation water. No conflicts with that or any other farm use have been identified, and
25 the proposed use will not damage agricultural land or associated improvements. Based on the
26 foregoing, the proposed discharge and reuse of test water is allowed as a utility facility necessary
27 for public service under ORS 215.283(1)(d) and ORS 215.275.

28
29 c. Clackamas County 100-year flood plain

30
31 As noted above, the location of the proposed discharge and reuse of water used in hydrostatic
32 testing is within the 100 year flood plain and is therefore within the County's Flood Management
33 District. CCZO § 703. The FMD overlay applies to "development" within the flood plain. The
34 discharge and reuse of water used in testing does not qualify as development as defined by section
35 703.03.C of the CCZO:

36
37 *"Development: Any manmade change to improved or unimproved real estate, including but*
38 *not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation,*
39 *or drilling operations located within the area of special flood hazard. For purposes of Section 703,*
40 *development does not include those activities of a type and magnitude which have no potential*
41 *effects on water surface elevations or on the level of insurable damages, as determined by the*
42 *Planning Director or designate, based on documentation supplied by the applicant."*

43
44 NWN proposes to place straw bales only on a temporary basis to help contain the discharged
45 waters. The discharge will result in no potential effects on water surface elevations or on the level
46 of insurable damages, as the only changes to real estate will be temporary, will not affect flood
47 elevations, and will be of a type that will not be affected in the event there is flooding as no

² October 7, 2003 letter from Neil Mullane, DEQ to Michael Hayward, NWN

1 discharge and reuse will occur during times of flooding. Based on these facts, the Council finds that
2 the proposed use complies with the flood plain provisions of the CCZO.
3
4

5 **Conclusion**

6

7 The diversion and disposal of water for hydrostatic testing is required for construction of the
8 SMPE, and complies with the applicable substantive provisions of the CCZO and directly
9 applicable statewide planning goals, rules and land use statutes. As a result, the proposed use
10 complies with the Council's land use standard, subject to the condition that the diversion of water
11 for hydrostatic testing authorized by this second amendment is authorized for a period of one year,
12 commencing on the effective date of the final authorization required for the use to occur.
13

14 **5. Protected Area Standard OAR 345-022-0040**

15 To issue the amendment, the Council must find that "...the design, construction and operation
16 of the facility are not likely to result in significant adverse impact ..." to listed protected areas.
17

18 **Discussion**

19

20 The SMPE crosses one listed area, the Willamette River Greenway. The Council found that
21 the crossing was permitted under OAR 345-022-0040(2) because NWN had studied alternative
22 locations for the Willamette crossing and found them to have greater impacts.
23

24 The discharge location is not near any protected area. The proposed diversion point is at a
25 location on the Willamette River. NWN will use a floating pump on the river itself. The
26 withdrawal will not affect the Willamette Greenway because the location is at an already developed
27 boat ramp area. There will be no disturbance of the banks of the Willamette or the Greenway. The
28 water will be diverted into an existing 12-inch pipe.
29

30 On August 28, 2003 the Council amended OAR 345-022-0040, updating cross references to
31 federal and state protected areas. However, the update does not change the status of the Willamette
32 Greenway, which is the only protected area affected by this amendment.
33

34 **Conclusion**

35

36 The Council finds that the proposed amendment complies with the Protected Area standard.
37 No additional conditions are required.
38

39 **6. Financial Assurance and Retirement Standards OAR 345-022-0050**

40 To issue the amendment, the Council must find that:

41
42 *(1) The site, taking into account mitigation, can be restored adequately to a useful,*
43 *non-hazardous condition following permanent cessation of construction or operation of*
44 *the facility.*

45 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit*
46 *in a form and amount satisfactory to the Council to restore the site to a useful, non-*
47 *hazardous condition.*

1
2 **Discussion**
3

4 In its Final Order approving the ASC, the Council found that the SMPE as a whole complied
5 with the standard. The Site Certificate requires NWN to obtain a restoration bond in the amount of
6 \$700,000 in 2001 dollars, and the Council found that NWN has the financial ability to obtain a bond
7 in that amount. The amount of the bond is a relatively small fraction of the project's overall cost,
8 estimated in the ASC at about \$80 million.
9

10 The proposed amendment does not change the scope or cost of site restoration in any way. The
11 water use and water discharge are described in the original ASC. Only the point of diversion and
12 the point of discharge are changed. On August 20, 2003 the Council approved the bond, and it is in
13 effect as of the date of this order.
14

15 **Conclusion**
16

17 The proposed amendment does not affect NWN's ability to meet the Financial Assurance and
18 Retirement standard, or the conditions associated with it. The Council finds that the proposed
19 amendment meets the standard. No additional conditions are required.
20

21 **7. Fish and Wildlife Habitat Standard OAR 345-022-0060**

22 To issue the amendment, the Council must find that:
23

24 *“***the design, construction, operation and retirement of the facility, taking into*
25 *account mitigation, are consistent with the fish and wildlife habitat mitigation goals and*
26 *standards of OAR 635-415-0025 in effect as of September 1, 2000.”*
27

28 **Discussion**
29

30 In its Final Order approving the ASC, the Council found that the SMPE, taking into account
31 mitigation, met the Oregon Fish and Wildlife (ODFW) habitat mitigation goals. The finding was
32 based on the Council's review of a habitat inventory, in which NWN listed the types of habitat
33 found in the corridor. The finding was then based on the Council's review of a Conceptual
34 Mitigation Plan, in which NWN described typical mitigation actions for the various habitat types
35 listed in the inventory. In its ASC, NWN stated that the precise impact of construction would not
36 be known until the final design stage, but it committed to producing a final detailed mitigation plan
37 (DMP) once the design was finalized. The Council accepted this approach, and imposed conditions
38 including a schedule for submittal and implementation of the DMP, a pre-construction inventory of
39 habitat and vegetation within the final pipeline alignment, and special conditions for changing the
40 impact to jurisdictional wetlands or higher quality (category 2 and 3) upland habitat.
41

42 The amendment includes a new diversion point for water from the Willamette, and a new
43 discharge location for the water used in hydrostatic testing. The Willamette is Category 1 habitat.
44 The new diversion point will not have any impact on the river, compared to what was originally
45 permitted. The diversion point is approximately 2.5 miles downstream from the originally
46 approved location. The diversion pump will be equipped with ODFW approved fish screens,
47 consistent with those previously approved. The pump will discharge to an already existing 12-inch
48 pipe. The site of the pump is a developed boat marina.
49

1 The discharge point that NWN originally proposed was a heavily vegetated ravine about 1500
2 feet west of the Pudding River, categorized in the ASC as Mixed Forest Category 4 habitat. The
3 vegetation was large trees and ground plants which would prevent erosion. However, NWN
4 encountered problems with the underground bore under the Pudding River and concluded that the
5 location west of the Pudding River was not suitable. NWN proposed an alternate and more suitable
6 location on the Anderson property, on the east bank of the Pudding River. The new discharge
7 location is near the east end of the Pudding River bore.
8

9 The location at the Anderson property, on the east bank of the Pudding river, is within the
10 approved corridor for the SMPE. Therefore the Council has already reviewed this location for fish
11 and wildlife habitat impact. The discharge point is on farmed land planted in nursery stock, which
12 will retard erosion. There will be no net loss of habitat because the water being discharged is river
13 water, with no chemicals or contaminants (see chemical tests results provided in support of DEQ
14 WPCF permit, exhibit 3 of the application for amendment). The discharge rate will be slowed and
15 the discharge will be controlled by a DEQ approved enclosure using straw bales and geotextile
16 sufficient to prevent scouring and erosion. The water will ultimately seep through to the Pudding
17 River, but the cover crop and DEQ approved measures will prevent excessive increase in turbidity.
18 NWN will have individuals stationed at the discharge location to ensure that the rate of discharge
19 does not result in erosion or scour that would result in an excessive increase in turbidity in the
20 Pudding River.
21

22 Conclusion

23
24 The Council finds that the proposed amendment complies with the Fish and Wildlife Habitat
25 Standard. A requirement to station personnel at the discharge to ensure that the rate of discharge
26 does not result in erosion, scour or increased turbidity shall be added as a condition.
27

28 8. Threatened and Endangered Species Standard OAR 345-022-0070

29 To issue the amendment, the Council must find that:
30

31 *“(1) For plant species that the Oregon Department of Agriculture has listed as*
32 *threatened or endangered under ORS 564.105(2), the design, construction, operation*
33 *and retirement of the proposed facility, taking into account mitigation:*

34 *(a) Are consistent with the protection and conservation program, if any, that the*
35 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

36 *(b) If the Oregon Department of Agriculture has not adopted a protection and*
37 *conservation program, are not likely to cause a significant reduction in the likelihood of*
38 *survival or recovery of the species; and*

39 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
40 *threatened or endangered under ORS 496.172(2), the design, construction, operation*
41 *and retirement of the proposed facility, taking into account mitigation, are not likely to*
42 *cause a significant reduction in the likelihood of survival or recovery of the species.”*
43

44 Discussion

45

1 In its Final Order approving the Application for Site Certificate, the Council found that the
2 SMPE was not likely to adversely affect the survival or recovery of any species listed as threatened
3 or endangered.
4

5 The new diversion point is approximately 2.5 miles downstream of the originally permitted
6 diversion point, and will be equipped with ODFW approved fish screens, as will the originally
7 permitted diversion. Therefore the Council finding that the originally permitted diversion point will
8 not affect listed species applies for the new diversion point as well.
9

10 The discharge point is within the approved corridor and was analyzed in the Final Order
11 issuing the Site Certificate. The water discharge will not affect any listed species because NWN
12 will discharge into an enclosure of straw bales and geotextile and will station personnel to control
13 the discharge rate to ensure that there is no scour or increased turbidity in the Pudding river.
14

15 **Conclusion**

16
17 The Council finds that the proposed amendment complies with its Threatened and Endangered
18 Species standard. No additional conditions are required.
19

20 **9. Scenic and Aesthetic Values Standard OAR 345-022-0080**

21 To issue the amendment, the Council must find that:

22 *“(1) Except for facilities described in sections (2), to issue a site certificate, the*
23 *Council must find that the design, construction, operation and retirement of the facility,*
24 *taking into account mitigation, are not likely to result in significant adverse impact to*
25 *scenic and aesthetic values identified as significant or important in applicable federal*
26 *land management plans or in local land use plans in the analysis area described in the*
27 *project order.*

28 *(2) The Council may issue a site certificate for a special criteria facility under OAR*
29 *345-015-0310 without making the findings described in section (1). However, the*
30 *Council may apply the requirements of section (1) to impose conditions on a site*
31 *certificate issued for such a facility.”*

32 **Discussion**

33
34
35 In the Final Order on the ASC, the Council found that the SMPE would not adversely affect
36 scenic and aesthetic resources primarily because the pipeline would be underground, except for a
37 the relatively small visual impact from valves required by operational considerations and 49 CFR
38 192 safety regulations. The proposed discharge and diversion will not affect scenic resources
39 because no permanent structures are proposed. The use of water is not changed, only the diversion
40 and discharge points are. The discharge permitted by the WPCF permit will be filtered through
41 straw bales or geotextile, which NWN will remove once the installation and testing are complete.
42

43 **Conclusion**

44
45 The Council finds that the proposed amendment complies with its Scenic and Aesthetic Values
46 standard. No additional conditions are required.
47

1 **10. Historic, Cultural and Archeological Resources Standard OAR 345-022-0090**

2 To issue the amendment, the Council must find that:

3
4 *“*** the construction, operation and retirement of the facility, taking into account*
5 *mitigation, are not likely to result in significant adverse impacts to:*

6 *(a) Historic, cultural or archaeological resources that have been listed on, or*
7 *would likely be listed on the National Register of Historic Places;*

8 *(b) For a facility on private land, archaeological objects, as defined in ORS*
9 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

10 *(c) For a facility on public land, archaeological sites, as defined in ORS*
11 *358.905(1)(c).”*

12 **Discussion**

13
14 The Council found that the SMPE is not likely to result in significant adverse impacts to
15 archeological resources, objects or sites based on surveys performed by NW Natural’s archeological
16 consultant. The Council imposed conditions that protect sites or objects uncovered during
17 construction, require NWN to avoid known archeological sites within the corridor, and require
18 NWN to survey temporary laydown areas and properties where NWN was denied access.

19
20 The diversion point will not affect the findings in the Final Order. NWN will use a floating
21 pump which it will connect to an existing 12-inch pipe. There will be no structures built and no
22 land disturbance.

23
24 The discharge point is within the approved corridor and has already been studied for
25 archeological, historical or cultural impact. The discharge of water will not have such impact
26 because it does not involve ground disturbing activities and because NWN will control the
27 discharge rate and will discharge into a straw and geotextile enclosure to prevent erosion and scour.

28
29 **Conclusion**

30
31 The Council finds that discharge and diversion are not likely to result in adverse impact to
32 archeological, cultural or historic resources. Existing conditions, as currently written, are sufficient
33 to ensure compliance with the Historic, Cultural and Archeological Standard. No additional
34 conditions are required.

35
36 **11. Recreational Standard OAR 345-022-0100**

37 To issue the amendment, the Council must find that:

38
39 *“***the design, construction and operation of a facility, taking into account mitigation,*
40 *are not likely to result in a significant adverse impact to important recreational*
41 *opportunities in the analysis area as described in the project order. The Council shall*
42 *consider the following factors in judging the importance of a recreational opportunity:*

43 *(a) Any special designation or management of the location;*

44 *(b) The degree of demand;*

45 *(c) Outstanding or unusual qualities;*

1 (d) Availability or rareness;

2 (e) Irreplaceability or irretrievability of the opportunity.”

3
4 **Discussion**

5
6 In its Final Order on the ASC, the Council found that the SMPE would not adversely affect any
7 important recreational opportunity in the analysis area. The finding was based on the fact that the
8 SMPE is underground for its entire length (except for valves required for operation or for safety),
9 the temporary nature of increased traffic and other construction related impacts, and the fact that
10 NWN will bore under major rivers and streams. The Council did not impose any conditions.

11
12 The new diversion point will not have any impact on the Willamette River that is different from
13 the existing diversion point. NWN will use a floating pump, located at an existing marina. The
14 diversion pump will be connected to an existing 12-inch pipe. As discussed under the Council’s
15 Protected Area standard, the diversion will not affect the Willamette Greenway.

16
17 The discharge point is within the approved corridor, and therefore was already studied for
18 impacts due to pipeline construction. Conditions under the Fish and Wildlife Habitat standard will
19 preclude erosion, scour, or adverse impact on the Pudding river.

20
21 **Conclusion**

22
23 The Council finds that the proposed amendment complies with its Recreational Standard. No
24 new conditions are required.

25
26 **12. Public Services Standard OAR 345-022-0010**

27 To issue the amendment, the Council must find that:

28 *“*** the construction and operation of the facility, taking into account mitigation, are*
29 *not likely to result in significant adverse impact to the ability of public and private*
30 *providers within the analysis area described in the project order to provide: sewers and*
31 *sewage treatment, water, storm water drainage, solid waste management, housing,*
32 *traffic safety, police and fire protection, health care and schools.”*

33
34 **Discussion**

35
36 In its Final Order on the ASC, the Council found that the SMPE complies with the standard
37 based on letters from local fire departments, police departments and other public services providers
38 indicating that they expected no adverse impact on their ability to provide their services. The site
39 certificate conditions related to this standard address traffic safety, police, fire and ambulance
40 service, and coordination with school districts and county road departments.

41
42 The proposed diversion and discharge point will not have any impacts that are different from
43 the currently approved diversion and discharge points. The diversion and discharge do not require
44 any public services and will not add to the impact on traffic, police or other public services.

45
46 **Conclusion**

1 The Council finds that the proposed amendment meets its Public Services standard. No
2 additional conditions are required.

3
4 **13. Waste Minimization Standard OAR 345-022-0120**

5 To issue the amendment, the Council must find that:

6
7 *“***(a) The applicant’s solid waste and wastewater plans are likely to minimize*
8 *generation of solid waste and wastewater in the construction, operation, and retirement*
9 *of the facility, and when solid waste or wastewater is generated, to result in recycling*
10 *and reuse of such wastes;*

11 *(b) The applicant’s plans to manage the accumulation, storage, disposal and*
12 *transportation of waste generated by the construction and operation of the facility are*
13 *likely to result in minimal adverse impact on surrounding and adjacent areas.”*

14
15 **Discussion**

16
17 In the Site Certificate, the Council imposed conditions governing the handling and recycling of
18 solid waste, disposal of water from hydrostatic testing and minimizing the use of water for pressure
19 testing by recycling. These conditions apply to construction activities wherever they occur,
20 including the discharge point identified in this amendment. Therefore this amendment would have
21 no effect on NWN’s compliance with this standard or the conditions imposed under it.

22
23 **Conclusion**

24
25 The Council finds that the proposed amendment meets its Waste Minimization standard. No
26 additional conditions are required.

27
28 **B. Public Health and Safety ORS 469.401(2)**

29
30 In the Site Certificate, the Council imposed conditions affecting construction practices, design,
31 and surveillance using best practical technologies. These conditions continue to apply.

32
33 The proposed amendment does not include or require any changes to conditions related to
34 public safety. The hydrostatic test is a safety requirement, regardless of where the water is obtained
35 or where it is discharged after the test.

36
37 **C. Permits of Agencies Other than EFSC**

38
39 **1. Limited Water License**

40 Under the Site Certificate, the Oregon Water Resources Department (WRD) issued limited
41 water licenses LL490 and LL491 pursuant to its regulations at ORS 537.143 and OAR 690-340-0030.
42 Under ORS 537.143 a limited license may be issued to use surface water for any use of short term
43 or fixed duration. Use of water under a limited license does not have priority over any water right
44 authorized under a permit or certificate, is subordinate to all other authorized uses that rely upon the
45 same source, and may be revoked at any time it is determined that the use causes injury to any other
46 water right or perennial stream flow. In the ASC NWN estimated the total water diversion for the
47 Project to be 8.45 million gallons.

1
2 The proposed amendment adds a limited water use license for up to 2 million gallons of water
3 from the Willamette river, to be diverted at a boat ramp on the south bank near Boone's Ferry Road.
4 This license would be in addition to existing licenses LL490 and 491.
5

6 OAR 690-340-0030 requires submission of an application to the WRD, including a completed
7 water availability statement from the local Watermaster. Under WRD rules, WRD may approve the
8 license "upon a finding that the proposed water use will not impair or be detrimental to the public
9 interest." The rule also imposes certain reporting requirements with respect to the use of the water.
10 NWN applied for Limited Use Licenses to WRD. The application and water availability statement
11 are included in the Application for Amendment 2, Exhibit 2. The application to WRD requests the
12 water use from October 1, 2003 until November 15, 2004.³
13

14 The use of water for hydrostatic testing and HDD drilling is a use allowed under ORS 537.143,
15 and that sufficient water is available, as required under OAR 690-340-0030(1)(b) for this short term
16 fixed duration use.
17

18 Based on WRD recommendation, the Council finds that a limited water license for use of up to
19 2 million gallons of water at up to 2000 gallons per minute from the Willamette River shall be
20 issued with substantially the following conditions:
21

- 22 1. The use of water under a limited license shall not have priority over any water right
23 exercised according to a permit or certificate and shall be subordinate to all other authorized
24 uses that rely upon the same source. The Director (of WRD) may be prompted by field
25 regulatory activities or any other reason to revoke the right to use water. ORS 537.143(2)
26 and OAR 690-340-0030(6).
- 27 2. NWN shall install, maintain and operate fish screening and by-pass devices as required by
28 the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed
29 diversion. The required screens and bypass devices are to be in place, functional and
30 approved by ODFW prior to diversion of any water.
31
- 32 3. NWN shall give notice to the Watermaster, the ODFW district biologist, and OOE not less
33 than 15 days or more than 60 days in advance of using water. The notice shall include the
34 location of the diversion, place of use, quantity of water to be diverted and the intended use.
35 NWN must also contact the ODFW field biologist at least 30 days⁴ in advance of using
36 water to determine if any additional requirements are needed to protect fish species.
- 37 4. At each diversion at which NWN withdraws water, NWN shall install a meter and maintain
38 a record of use, including the total number of hours of pumping, the total quantity pumped
39 and the categories of beneficial use to which the water is applied. The record of use shall be
40 supplied to the Watermaster on request.

³ The application for amendment submitted to OOE on September 15, 2003 requested the water use until November 15, 2003. The application submitted to WRD requested the use until November 2004. NWN subsequently clarified that it requests the limited water use until November 15, 2004.

⁴ The Council considers NWN to have met this condition under existing license LL491, because the ODFW district biologist was informed of the water diversion and has stated that the measures to protect fish species are the same regardless of which diversion point is used.

- 1 5. The limited license is effective for the requested use for one year after the date of issuance.⁵
2 Upon completion of the project, NWN shall submit the record of use to the Water Resources
3 Department.
- 4 6. The use shall be allowed only at times then the Watermaster has determined the flows of the
5 source stream are sufficient to satisfy existing right, including instream rights. The use shall
6 only be allowed at when ODFW has determined the amount of the diversion will not reduce
7 the flows of the source stream below an amount sufficient to meet the needs of spawning
8 salmon. The point of diversion shall be at the boat ramp on the south bank of the Willamette
9 River, near where Boone's Ferry Road reaches the river.

11 2. WPCF Water Discharge Permit

12 Under the Site Certificate, the Department of Environmental Quality (DEQ) issued a WPCF
13 permit for wastewater discharge under its regulations at OAR Chapter 340, Division 45. The permit
14 authorizes discharge at three locations, two in Washington County and a third on the south bank of
15 the Willamette River. No change to these discharge locations is proposed and Amendment #2 has
16 no effect on the permit for discharge at these locations.

17
18 As discussed in section II of this order, construction in 2003 is limited to the southern 11.7
19 miles of the SMPE. A hydrostatic test of this 11.7 mile segment is a federal safety requirement.
20 The discharge points authorized by the existing WPCF permit are not near this section of the
21 pipeline. Therefore NWN requested a special permit from DEQ for a discharge at a location in the
22 approved corridor and close to the site of the hydrostatic test. The special permit is described in
23 OAR 340-045-0061, which states that:

24
25 "The Director may waive the procedures required in OAR 340-045 and issue a special,
26 short-term WPCF permit for unexpected or emergency activities, operations, emissions or
27 discharges. Such a permit will not exceed 60 days in duration from date of issuance and will
28 be developed to ensure adequate protection or property and preservation of public health,
29 welfare and resources. Application for a special WPCF permit must be in writing and may
30 be in the form of a letter that fully describes the emergency and the proposed activities,
31 operations, emissions, or discharges."

32
33 NWN applied for the special WPCF permit in a letter to DEQ dated September 11, 2003
34 (Application for Amendment #2, Exhibit 3). The letter describes the emergency, the proposed
35 discharge and its location, and includes information on soil type, nearby wells, and water chemistry
36 test results from a similar hydrostatic test. The test results showed small increases in copper, iron
37 and manganese, but not in significant amounts. The pipe manufacturing and coating process does
38 not use oils or solvents. NWN will discharge into a straw bale and geotextile enclosure, shown in
39 the letter and similar to what was permitted in the site certificate. NWN's letter to DEQ states that
40 the discharge volume will be 1.5 million gallons.

41
42 The discharge location originally proposed was a forested ravine on the west side of the
43 Pudding River, on property across the road from Aurora Airport. Due to problems that NWN
44 encountered during the underground bore under the Pudding river, NWN determined that this
45 location was not viable and could result in surface discharge to the Pudding River.

⁵ The use is limited to one year, in compliance with the Clackamas County Zoning Ordinance

1 NWN proposed a new location on the east bank of the Pudding River on the Anderson
2 property, located at 45° 14' 57"N, 122° 44' 43"W. It is farmed land and is planted in nursery stock,
3 which would retard erosion. NWN issued a revised map with the new location. All other
4 conditions regarding the chemical contents of the discharge water and the use of engineered
5 methods to prevent erosion and runoff to the river as described in exhibit 3 to the Application for
6 Amendment continue to apply. The soil listed at this new location is Newberg fine sandy loam with
7 slight water erosion hazard, per NRCS soils maps. NWN states that the nearest well is more than
8 750 feet from the discharge site.

9
10 Based on the information in Exhibit 3 of the application for amendment, DEQ recommended
11 approval on condition that NWN follow the procedures described in its September 11, 2003 letter to
12 DEQ, and that the Water Quality Source Control Section, NWR, shall be notified in writing upon
13 completion of the project. The location on the east bank of the Pudding River is acceptable, based
14 on the measures that NWN will implement to control the discharge⁶.

15
16 The Council finds that the request for the special WPCF permit complies with DEQ's
17 requirements, subject to the above conditions recommended by DEQ.
18

19 **V. ISSUES RAISED IN PUBLIC COMMENT**

20
21 The Office of Energy accepted public comments on the application until the close of business
22 on September 29, 2003. The Office received one telephone comment from Richard Anderson, who
23 owns the property on the east bank of the Pudding River. Mr. Anderson argued that the requirement
24 to pipe water from the Willamette made no sense because ample water was available from the
25 Pudding. Mr. Anderson did not argue that the proposed diversion from the Willamette failed to
26 meet any of WRD's requirements, only that diversion from the Pudding might be better. However,
27 the Watermaster had already ruled that the flow in the Pudding was not sufficient, and that NWN
28 must use the Willamette. The Office received no other comments from the public.

29
30 The Office accepted public comment on the proposed order until October 7, 2003, but did not
31 receive any comments. The Office did not receive any requests for contested case on the temporary
32 order for this amendment.
33

34 **VI. ORDER AND SITE CERTIFICATE AMENDMENTS**

35
36 The Council finds that the changes to the facility described in NWN's Application for
37 Amendment 2 to the Site Certificate for the SMPE comply with the Council's standards. The
38 Council adopts the site certificate amendments proposed by NWN (as amended to allow the limited
39 water use for one year) and listed at section III.C of this order. An additional condition shall state
40 that:

41
42 "NWN shall station personnel at the discharge location to monitor the rate of discharge and
43 control the rate of discharge sufficiently to preclude scour and erosion that would result in an
44 excessive increase in turbidity."
45

46 The Council finds that DEQ shall issue the special WPCF permit, valid until November 30,
47 2003 and subject to the conditions set forth at section IV.C.2 of this order. The Council finds that
48 WRD shall issue the limited water use license in effect immediately upon issuance and valid for one

⁶ October 7, 2003 letter from Neil Mullane, DEQ to Michael Hayward, NWN

1 year from date of issuance, with the conditions listed in section IV.C.1 of this order. A condition
2 shall be added to the Site Certificate under the Council's Land Use Standard, stating that:

3
4 "The diversion of water for hydrostatic testing authorized by Amendment No.2 is authorized
5 for a period of one year, commencing on the effective date of the final authorization required for the
6 use to occur."

7
8 Issued December 5, 2003.

ENERGY FACILITY SITING COUNCIL

By:  Dec 5 '03
Roslyn Elms-Sutherland, Chair date

9