

1 then sends it via pipeline to Madison Farms, which uses it for crop irrigation. Lamb-
2 Weston disposes of water from the potato wash process by land application for crop
3 irrigation under a Water Pollution Control Facility (WPCF) permit issued to Lamb-
4 Weston by the Department of Environmental Quality (DEQ).

5
6 The facility also has a zero discharge system to process its reclaimed wastewater.
7 The facility initially used that system, but now keeps it in cold standby.

8
9 In this order, all references to the “original order” are to the Final Order in the
10 Matter of the Application Hermiston Generating Company for a Site Certificate, which
11 the Council issued March 11, 1994. Further, all references to the “amended site
12 certificate” are to the “Thermal Power Plant Second Amended Site Certificate for the
13 Hermiston Generating Project,” which the Council issued on August 28, 1997.

14 15 **B. Procedural History**

16
17 **B.1 Request for Expedited Review.** The Holders requested that the Council conduct
18 an expedited review of its amendment request. OAR 345-027-0080(2) authorizes the
19 chair of the Council to grant expedited review of an amendment “if a delay would unduly
20 harm the certificate holder and if the facility, with the proposed change, would not likely
21 result in a significant adverse impact.”

22
23 The Holders’ request for expedited review of the proposed amendment states that in
24 November 2000, Lamb-Weston needs to repair and replace its existing wastewater pipeline
25 within its existing easement. The Holders desire to place their discharge reclaimed
26 wastewater pipe in the same ditch and easement as the Lamb-Weston pipe that will be
27 replaced for the part of the route that is outside of Madison Farms. For that reason, the
28 Holders believe coordination of the two projects will significantly lessen the environmental
29 impact of building a pipeline to carry the facility’s discharge of reclaimed wastewater by
30 reducing the amount of ground disturbance. They also believe they will be unduly harmed if
31 expedited review of their proposed amendment is not granted because the normal timeline
32 for review of a site certificate amendment will not allow them to coordinate the project with
33 Lamb-Weston.

34
35 Karen H. Green, chair of the Council, found that the request for expedited review
36 satisfies the criteria in OAR 345-027-0080(2). She granted the request for expedited review
37 on October 4, 2000.

38 39 **B.2 Office of Energy Review Steps**

40
41 **B.2.2 The Holders’ Request.** The Holders submitted their full request for amendment
42 number five to the Council on October 5, 2000. They submitted an electronic version of
43 the request, without the complete set of exhibits and maps, on October 3, 2000.

44
45 **B.2.2.1 Office of Energy Request for Information.** On October 12, 2000, the Office
46 sent a letter to HGP requesting information to clarify various issues. HGP replied on

1 October 25, 2000. HGP also forwarded a letter from Kent Madison, owner of Madison
2 Farms, dated October 23, 2000, regarding problems in using potato wash water on potato
3 crops. HGP also replied to a number of e-mail and telephone requests from the Office to
4 provide clarification to responses in its letter of October 25, 2000.

5
6 **B.2.3 Review by Other Agencies, Local Governments and Tribes.** The Office,
7 pursuant to OAR 345-27-070(1), identified potentially affected agencies, local
8 governments and tribes and asked them to review the request for amendment. The Office
9 mailed a copy of the amendment request along with a review report form on October 5,
10 2000, to those agencies, local governments and tribes and asked them to reply by
11 October 20, 2000.

12
13 The reviewing agencies, local governments and tribes are the Oregon Department
14 of Geology and Mineral Industries, the Oregon Department of Fish and Wildlife; the
15 Division of State Lands; the Department of Agriculture; the Department of Land
16 Conservation and Development; the Water Resources Department; the Department of
17 Parks and Recreation; the State Historic Preservation Office; the Department of
18 Transportation; the Department of Environmental Quality; the Office of State Fire
19 Marshall; the Oregon Public Utilities Commission; the Building Codes Division; the
20 Department of Forestry; the Northwest Power Planning Council; the Cities of Hermiston,
21 Stanfield, Umatilla, Echo, and Irrigon; Umatilla County; the Confederated Tribes of the
22 Umatilla Indian Reservation; and the Confederated Tribes of Warm Springs.

23
24 **B.2.3.1 Replies.** DEQ worked with the Office in preparing its evaluation report of the
25 impacts of land application of reclaimed wastewater and in recommending the conditions
26 for the WPCF permit. DEQ's comments are addressed in the discussion of the WPCF
27 permit in Section E.4.1 and in Attachments A and B. DEQ also noted that the term,
28 "process wastewater," that the Holders used in their request has broader and inadvertent
29 implications under federal rules. Therefore, to avoid confusion, the Council uses the
30 term "reclaimed wastewater" to describe the cooling tower blow-down and clarifier
31 draw-down water. (Note: In its temporary order, dated November 17, 2000, the Council
32 used the term "industrial wastewater" to refer to the cooling tower blow-down and
33 clarifier draw-down water. However, the Water Resources Department ("WRD")
34 subsequently informed the Office that "industrial wastewater" has a specific meaning
35 relating to water law. That meaning does not apply to this situation. Therefore, to avoid
36 further confusion, the Council uses the term "reclaimed wastewater" in this final order.)

37
38 Umatilla County commented on the applicability of the land use standard. It did
39 not propose any conditions. Its comments on zoning permit requirements are discussed
40 in Attachment C, relating to land use issues.

41
42 WRD raised an issue about whether a water use permit would be required for
43 disposal of the reclaimed wastewater. In personal communication with the Office, WRD
44 staff stated that a water use permit would not be required if the Council found that the
45 reclaimed water use met the requirements of ORS 537.132. Later personal

1 communication with WRD, after the Council issued the temporary order, clarified the
2 application of ORS 537.132. That issue is addressed in more detail in Section E.4.3.

3
4 No other agency that replied had a comment.

5
6 **B.2.4 Initial Public Notice.** On October 5, 2000, the Office mailed a notice of the
7 Holders' request for amendment to all persons on the Council's general mailing list and
8 persons on an updated mailing list for the project, pursuant to OAR 345-027-0080(3).
9 The notice asked for comments to the Office by October 20, 2000. The Office received
10 no comments.

11
12 **B.2.5 Proposed Order.** The Office issued its proposed temporary order on
13 November 7, 2000.

14
15 **B.2.6 Notice.** On November 7, 2000, the Office mailed notice of the proposed
16 temporary order to the Council's general mailing list, reviewing agencies, and an updated
17 project list. The notice explained the special procedure for temporary orders issued
18 pursuant to an expedited review procedure. The notice informed the public that the
19 Council will decide whether to issue a temporary order granting the request at its meeting
20 on November 17, 2000. Following that decision, the public will have 15 days to ask the
21 Council to hold a contested case proceeding on the temporary order, pursuant to OAR
22 345-027-0080(6).

23
24 On January 9, 2001, the Office mailed notice of the proposed final order to the
25 Council's general mailing list as part of the agenda for the January 19, 2001, meeting.

26
27 **B.2.7. Public Comments on the Proposed Temporary Order.** Charles R. "Chuck"
28 Norris wrote the Council in support of the requested amendment and noted the legislative
29 history of changes to Oregon statutes that permitted the use of reclaimed water without
30 requiring a separate water right. Mrs. Lucy Ziemer, a neighbor of Madison Farms, called
31 the Office on November 14, 2000, to comment on the strong odor from the application of
32 wastewater from Lamb-Weston, Inc., at Madison Farms. Staff informed her that this
33 amendment request did not involve wastewater from Lamb-Weston and that the
34 wastewater from HGP should not have a noticeable odor. On the same day, Mr. Greg
35 Parks, another neighbor of Madison Farms, also called to comment on the odor from the
36 land application of wastewater from Lamb-Weston. He stated his support for having
37 additional water available for crops, however. Staff also clarified that the wastewater
38 from HGP was different from the wastewater from Lamb-Weston. There were no other
39 comments from the public.

40
41 **B.2.8. Public Comments on the Temporary Order.** On November 17, 2000, the
42 Office mailed notice of the Council's adoption of a temporary order to the Council's
43 general mailing list, reviewing agencies, and an updated project list. The Office gave
44 notice of the procedure by which a person could request a contested case on the
45 temporary order. There was no comment or request for contested case on the temporary
46 order.

1
2 **B.3 Council Review Steps**

3 As noted above, Karen H. Green, chair of the Council, granted the Holders’
4 request for an expedited review on October 4, 2000.

5
6 **B.3.1 Council Notice.** The Office mailed the Holders’ request for amendment and a
7 memo summarizing the request to the Council on October 5, 2000. The Office mailed
8 the proposed temporary order to the Council on November 7, 2000. The Office mailed
9 the proposed final order to the Council on January 9, 2001.

10
11 **B.3.2 Council Decision.** The Council approved the temporary order granting the
12 request at a regular meeting on November 17, 2000. The Council issued the final order
13 granting the request at a regular meeting on January 19, 2001.

14
15 **C. Overview of Request for Amendment**

16 There are two major elements to the amendment request: 1) the request for
17 Council approval to build a buried reclaimed wastewater pipeline from the facility to
18 booster station number one on Madison Farms, along with the pumping station at the
19 facility; and, 2) the request for Council approval of a WPCF permit for land disposal of
20 the HGP wastewater at Madison Farms.

21
22 **C.1 Reclaimed Wastewater Pipeline and Pumping Station.** The total length of the
23 pipeline is about 5.3 miles. Because the whole pipeline, regardless of ownership, is a
24 related and supporting facility to a generating plant with a site certificate, the whole
25 pipeline is subject to Council standards. The Holders are responsible for ensuring that
26 the construction and operation of the pipeline conforms to the site certificate. Along with
27 the environmental impact standards, the major issue for the Council is to determine that
28 the buried pipeline meets the land use standard for crossing land zoned Exclusive Farm
29 Use (“EFU”).

30
31 Between the generating plant and the boundary of Madison Farms (2.4 miles),
32 HGP will pay for Lamb-Weston to place the pipeline alongside Lamb-Weston’s
33 wastewater pipeline within easements that Lamb-Weston has. Because Lamb-Weston
34 has these easements, it will initially own the HGC pipeline within the easement even
35 though HGP is paying for it. Once HGP can negotiate its own easements, it will
36 purchase the pipeline from Lamb-Weston.

37
38 From the Madison Farms property line to booster station number one (2.9 miles),
39 Madison Farms will construct and own the pipeline. HGP will pay Madison Farms to
40 construct the pipeline. The HGP pipeline diverts from the Lamb-Weston pipeline route
41 shortly after crossing onto Madison Farms property.

42
43 HGP will construct a reclaimed wastewater pumping station at the generating
44 plant.

1 **C.2 WPCF Permit for Land Application of Reclaimed Wastewater.** For HGP to
2 provide reclaimed wastewater to Madison Farms for land application on crops, HGP must
3 have a WPCF permit. Under Council statutes, the Council must decide whether to direct
4 DEQ to issue the permit and with what conditions it must do so. The discussion of the
5 WPCF permit is contained in Section E.4.1 and Attachment B to this order. Attachment
6 A to this order and to the Thermal Power Plant Third Amended Site Certificate for the
7 Hermiston Generating Project contains the WPCF permit that the Council authorizes
8 DEQ to issue.
9

10 **D. Amendments to Amended Site Certificate**

11 The Holders request the following amendments to the amended site certificate to
12 allow them to construct and operate the proposed reclaimed wastewater pipeline to the
13 land application discharge system. They also request that the Council require the DEQ to
14 issue HGP a WPCF permit. The text shows the Holders' requested amendments to the
15 amended site certificate as strikeouts and underlines. For each amendment, the Council
16 adds an identification tag for amendment number five, i.e., "[Amendment No. 5]."
17

18 **D.1 Revisions to Amended Site Certificate Conditions**

19
20 **D.1.1** The Holders request that the Council make the following changes, as identified by
21 double underlines, to the Second Amended Site Certificate dated August 28, 1997:
22

23 **Part I, Section A, Paragraph 1, Last Two Sentences (Lines 31 through 39), Page 1**

24 As used in this Site Certificate, the "application for site certificate" or the ASC,
25 includes those changes and/or additions to the Facility described in: (a) Holder's
26 Request for Amendment No. 1, dated June 3, 1994, attached to the First Amendment
27 as Exhibit 1; (b) Holder's Petition to Apply Subsequent Rules and Request for
28 Amendment No. 2, dated January 19, 1996; (c) Holder's Request for Partial
29 Assignment, dated April 26, 1996; (d) Holders' Request for Amendment dated May
30 16, 1997; and (e) Holders' Request for Amendment dated October 3, 2000. The facts,
31 reasoning, conclusions, and conditions relied on for approval are set out in Council's
32 final orders dated March 11, 1994, August 12, 1994, May 10, 1996, July 23, 1996,
33 August 28, 1997, and January 19, 2001, which by this reference are incorporated
34 herein. [Amendment No. 5]
35

36 The Council adopts the proposed amendment.
37

38 **Part II, Section A.2 ("Related or Supporting Facilities"), Page 3,** add the following
39 paragraph:
40

41 **c. Process Water Pipeline Right of Way:** The right-of-way for the process
42 water pipeline is located entirely within Umatilla County. The right-of-way is shown
43 in Figure 7 of the Holders' Request for Fifth Amendment to the Site Certificate.
44 [Amendment No. 5]
45

1 The Council adopts the proposed amendment as modified below to clarify that the subject is
2 “reclaimed wastewater”:

3
4 **c. Reclaimed Wastewater Pipeline Right of Way:** The right-of-way for the
5 reclaimed wastewater pipeline is located entirely within Umatilla County. The right-
6 of-way is shown in Figure 7 of the Holders’ Request for Fifth Amendment to the Site
7 Certificate. [Amendment No. 5]

8
9 **Part II, Section B.2 (“Related or Supporting Facilities”), Page 4,** add the following
10 paragraph:

11
12 **c. Process Water Pipeline – A buried pipeline will carry process water from**
13 the energy facility to Madison Farms. [Amendment No. 5]

14
15 The Council adopts the proposed amendment as modified below to clarify that the subject is
16 “reclaimed wastewater”:

17
18 **c. Reclaimed Wastewater Pipeline – A buried pipeline will carry reclaimed**
19 wastewater from the energy facility to Madison Farms. [Amendment No. 5]

20
21 **Part IV, Section B, “Structural Standard,” Page 7,** add the following condition:

22
23 (7) Topsoils and subsoils resulting from the excavation for the process water
24 pipeline should be segregated and the topsoil restored to minimize impacts on soil
25 fertility. [Amendment No. 5]

26
27 The Council adopts the proposed amendment as modified below to clarify that the subject is
28 “reclaimed wastewater” and to substitute “shall” for “should”:

29
30 **Part IV, Section B, “Structural Standard,” Page 7,** add the following condition:

31 (7) Topsoils and subsoils resulting from the excavation for the reclaimed wastewater
32 pipeline shall be segregated and the topsoil restored to minimize impacts on soil
33 fertility. [Amendment No. 5]

34
35 **Part IV, Section B, “Organizational, Managerial and Technical Expertise**
36 **Standard,” Page 9,** add the following conditions:

37
38 (6) Prior to commencing operation of the process water discharge pipeline to
39 Madison Farms, the Holders shall demonstrate that the DEQ has issued to Holders a
40 Water Pollution Control Facilities permit allowing for the irrigation of process water
41 on the designated land application fields. [Amendment No. 5]

42
43 (7) Prior to commencing operation of the process water pipeline to Madison Farms,
44 the Holders shall have a contract with Madison Farms to accept and manage the
45 process water flow consistent with the Water Pollution Control Facilities permit
46 issued to Holders by DEQ. [Amendment No. 5]

1
2 The Council adopts changes to these conditions in the discussion of the WPCF permit in
3 Section E.4.1, below.

4
5 **Part IV, Section C, “Waste Minimization Standard,” Page 13,** add the following
6 condition:

7
8 (6) Process water conveyed from the energy facility to Madison Farms for irrigation
9 use shall comply with all applicable water quality parameters of the Water Pollution
10 Control Facilities permit issued to Holders by DEQ. [Amendment No. 5]

11
12 The Council adopts the proposed amendment as modified below to clarify that the subject is
13 “reclaimed wastewater”:

14
15 (6) Reclaimed wastewater conveyed from the energy facility to Madison Farms for
16 irrigation use shall comply with all applicable water quality parameters of the Water
17 Pollution Control Facilities permit issued to Holders by DEQ. [Amendment No. 5]

18
19 **Exhibit B, Condition 1, Page 19**

20 Holders shall construct and operate a zero discharge system as described on pages B-
21 12.a.2 through B-14.a.2 of the ASC, as amended by the “Amendment to Application
22 for Site Certificate” dated December 24, 1993 (at pages 1 and 4), and as further
23 amended by the “Request for Amendment,” at pages 6-8, submitted on June 3, 1994,
24 and as further amended by the “Request for Amendment” dated May 16, 1997, and
25 as further amended by the “Request for Amendment” dated October 3, 2000. The
26 zero discharge system and Lamb-Weston process water system shall be reserved as
27 backup systems. The primary system for disposing of process water shall be through
28 agricultural irrigation at Madison Farms in accordance with the Water Pollution
29 Control Facilities Permit granted to the Holders by the Oregon Department of
30 Environmental Quality. [Amendment No. 5]

31
32 The Council adopts the proposed amendment as modified below to clarify that the subject is
33 “reclaimed wastewater”:

34
35 Holders shall construct and operate a zero discharge system as described on pages B-
36 12.a.2 through B-14.a.2 of the ASC, as amended by the “Amendment to Application
37 for Site Certificate” dated December 24, 1993 (at pages 1 and 4), and as further
38 amended by the “Request for Amendment, at pages 6-8, submitted on June 3, 1994,
39 and as further amended by the “Request for Amendment” dated May 16, 1997, and
40 as further amended by the “Request for Amendment” dated October 3, 2000. The
41 zero discharge system and Lamb-Weston process water system shall be reserved as
42 backup systems. The primary system for disposing of reclaimed wastewater shall be
43 through agricultural irrigation at Madison Farms in accordance with the Water
44 Pollution Control Facilities Permit granted to the Holders by the Oregon Department
45 of Environmental Quality. [Amendment No. 5]
46

1 The Council adopts additional conditions, as discussed below relative to specific
2 standards. The Council also makes conforming changes to the site certificate to change
3 that references from “process water and process wastewater” to “reclaimed wastewater”
4 as appropriate to be consistent with the usage of the terms in this order.

5
6 **E. Compliance with Council Standards**

7 The amended site certificate provides at Condition IV.A.2:

8
9 The conditions in this Site Certificate may not be changed during the term of the
10 certificate except as provided in OAR 345-27-050 through OAR 345-27-080, and
11 OAR 345-27-095 (November 1995). Holder may request that amendments to
12 conditions be considered pursuant to the Division 27 rules in effect at the time
13 the amendment is filed. A request to have the amendment considered pursuant to
14 a later adopted version of Division 27 rules will be granted unless the Council
15 finds that applying the later-adopted rules would create a significant threat to
16 public health, safety or the environment.

17
18 The above-mentioned rules relate to the amendment process pursuant to
19 Division 27. The Holders did not request that the Council consider the amendment
20 request pursuant to current Division 27, so the Council is using the 1995 amendment
21 process rules. However, the applicable 1995 rules do not differ significantly from current
22 rules.

23
24 OAR 345-27-070(6) sets forth the Council’s general standard for review of a
25 request by a site certificate holder for an amendment:

26
27 In evaluating a request for an amendment under this rule, the Council shall limit
28 its consideration to the effects which may be produced by the proposed change or
29 addition to the site or facility described in the request for amendment. In
30 considering those effects, the Council shall apply state statutes, administrative
31 rules, and local government ordinances in effect on the date the amended Site
32 Certificate is executed.

33
34 The following discussion of applicable standards addresses the current
35 (February 2000/November 2000) version of the OAR Chapter 345, Division 22, rules.
36 For OAR 345-022-0060, the discussion addresses changes to that rule that went into
37 effect after the Council made a decision on a temporary order, but before it issued a final
38 order. Therefore, the discussion shows compliance with both versions of the rule.

39
40 **E.1 Standards Relating to the Applicant**

41
42 **E.1.1 Organizational, Managerial and Technical Expertise, OAR 345-022-010**

43 This standard has four paragraphs. Two, 022-0010(1) and 022-0010(2), relate to
44 application qualifications and capability and two, 022-010(3) and 022-0010(4), relate to
45 third party permits.

46
47 **E.1.1.1 Applicant Qualification and Capability, OAR 345-22-010(1)**

1 To issue a site certificate, the Council must find that the applicant has the organizational,
2 managerial and technical expertise to construct and operate the proposed facility. To
3 conclude that the applicant has the organizational, managerial and technical expertise to
4 construct and operate the proposed facility, the Council must find that the applicant has a
5 reasonable probability of successful construction and operation of the proposed facility
6 considering the experience of the applicant, the availability of technical expertise to the
7 applicant, and the past performance of the applicant in constructing and operating other
8 facilities, including, but not limited to, the number and severity of regulatory citations, in
9 constructing or operating a facility, type of equipment, or process similar to the proposed
10 facility.

11
12 **Discussion.** The proposed modification does not involve a change in entities (i.e., the
13 Holders or operating agent) responsible for the construction and operation of the energy
14 facility. U.S. Operating Services Company (USOSC) is the operating agent and Hermiston
15 Generating Company, LP, and PacifiCorp are the site certificate holders. The proposed
16 modification involves the construction of an on-site pump station and a buried pipeline from
17 the energy facility to Madison Farms, the operation of those facilities, and compliance with a
18 WPCF permit. The construction and operation of the pump station and pipeline are
19 incidental to the construction and operation of the whole facility and are within the expertise
20 of the site certificate holders and USOSC, as determined in the Final Order on Request for
21 Amendment No. 4.

22
23 The actual use and operation of the land application system (i.e., reclaimed
24 wastewater irrigation scheduling, crop maintenance, soil moisture monitoring, pivot
25 operation, booster pump operation and maintenance, etc.) will be the responsibility of
26 Madison Farms under a contractual agreement with HGP. However, HGP remains
27 responsible for compliance with its WPCF permit. Madison Farms has operated land
28 application systems for more than 10 years and currently irrigates with reclaimed wastewater
29 from Lamb-Weston. In both cases, Madison Farms operates under contractual agreements
30 for the beneficial reuse of reclaimed wastewater under a WPCF permit granted by the DEQ
31 to the respective responsible parties.

32
33 The Council finds that USOSC, Hermiston Generating Company, LP, and PacifiCorp
34 have the expertise to operate the reclaimed wastewater disposal system and to enforce
35 contract provisions with Madison Farms for land application pursuant to the Holders' WPCF
36 permit.

37
38 **Ownership of Reclaimed Wastewater Pipeline.** Although HGP is paying to install the
39 reclaimed wastewater pipeline from HGP to booster station number one at Madison Farms, it
40 will not initially own the pipeline, as noted in Section C.1. Lamb-Weston will own the
41 pipeline from the property line of the facility to the property line of Madison Farms and
42 Madison Farms will own the pipeline on its property.

43
44 Lamb-Weston will initially own the segment to Madison Farms because it has the
45 easements to allow it to install the pipeline. When HGP can negotiate its own easements, it
46 will purchase the pipeline from Lamb-Weston. Madison Farms will continue to own the
47 pipeline on its land for the foreseeable future. The Council adopts the following condition to

1 allow the Holders to purchase the pipeline and acquire easements without the necessity of
2 further Council action.

3
4 IV.B “Organizational, Managerial and Technical Expertise Standard”

5 (8) The Holders may purchase the reclaimed wastewater pipeline authorized by
6 Amendment Number Five from Lamb-Weston, Inc., without requiring approval of
7 the Council. The Holders may purchase easements and obtain necessary permission
8 from property owners for the reclaimed wastewater pipeline from the facility to
9 Madison Farms without requiring approval of the Council. The Holders shall report
10 to the Council if they acquire easements for and purchase the pipeline. [Amendment
11 No. 5]

12
13 **Conclusion.** The Council finds that HGP meets the requirements of OAR 345-022-
14 0010(1) and adopts the related condition.

15
16 **E.1.1.2 OAR 345-022-0010(2)**

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

21
22 **Discussion.** OAR 345-022-0010(2) establishes a rebuttable presumption of organizational,
23 managerial and technical expertise if an applicant has an ISO 9000 or ISO 14000 certified
24 program and proposes to design, construct and operate the facility according to that program.
25 The Holders do not propose to submit evidence of ISO certification for this project.

26
27 **Conclusion.** The Council finds that HGP has not requested a rebuttable presumption of
28 expertise pursuant to OAR 345-022-0010(2).

29
30 **E.1.1.3 Third-Party Services and Permits, OAR 345-22-010(3)**

31 If the applicant does not itself obtain a state or local government permit or approval for
32 which the Council would ordinarily determine compliance but instead relies on a permit
33 or approval issued to a third party, the Council, to issue a site certificate, must find that
34 the third party has, or has a reasonable likelihood of obtaining, the necessary permit or
35 approval, and that the applicant has, or has a reasonable likelihood of entering into, a
36 contractual or other arrangement with the third party for access to the resource or service
37 secured by that permit or approval.

38
39 **Discussion.** The pipeline segment from the energy facility to Cottonwood Bend Road will
40 be constructed on Lamb-Weston property per an agreement between Hermiston Generating
41 and Lamb-Weston, Inc. Currently, this is a verbal agreement with a written and signed
42 document to follow after review by both parties. After the pipeline leaves Lamb-Weston’s
43 property, it enters and proceeds south along Cottonwood Bend Road. Lamb-Weston
44 currently has an easement in place with Umatilla County for this segment.

45
46 The Holders report that Lamb-Weston also has a crossing permit for passing beneath
47 the railroad trestle from Union Pacific Railroad. Hermiston Generating still needs to obtain a

1 crossing permit from Union Pacific to place its pipeline beneath the trestle, but this is not a
2 state or local permit. Lamb-Weston is obtaining the appropriate permits from Umatilla
3 County for performing construction activities in the roadway.

4
5 The Holders report that Lamb-Weston has the necessary easements for the two canal
6 crossings from the Westland Irrigation District and is in the process of obtaining permission
7 for the upcoming construction activities. If the reclaimed wastewater pipeline can fit
8 through the existing casing, no additional permission is needed to install HGP's pipeline.
9 However, if a separate crossing is necessary, Lamb-Weston will need to obtain permission
10 from the Westland Irrigation District to construct the additional crossing in its current
11 easement.

12
13 The Holders report that Lamb-Weston has easements and permission from the
14 private property owners south of the irrigation canal to Interstate 84. Lamb-Weston has
15 easements and permission from the private property owners south of Interstate 84 to
16 Madison Farms property boundary. Lamb-Weston has an easement from the State of
17 Oregon for the conduit that holds the pipes that run beneath Interstate 84.

18
19 The Holders report that Madison Farms has agreed to construct the remaining
20 pipeline segment from the property boundary to booster station number one. Madison Farms
21 will retain ownership of this pipeline segment on its property, so no easement is required.

22
23 The Holders will pay Lamb-Weston to construct the process wastewater pipeline
24 from the facility to the property line of Madison Farms and pay Madison Farms to construct
25 the pipeline on its property. The Council adopts the following condition to ensure that
26 Lamb-Weston and Madison Farms construct the pipeline in accordance with the conditions
27 in this order and the Thermal Power Plant Third Amended Site Certificate for the Hermiston
28 Generating Project.

29
30 IV.B (Organizational, Managerial and Technical Expertise Standard)

31 (9) Prior to commencing construction of the reclaimed wastewater pipeline, the
32 Holders shall submit to the Council contracts with Lamb-Weston, Inc., and Madison
33 Farms that ensure that they construct and operate the pipeline in compliance with the
34 conditions in the Thermal Power Plant Third Amended Site Certificate for the
35 Hermiston Generating Project. [Amendment No. 5]

36
37 The Council finds that Lamb-Weston and Madison Farms, as the third-parties
38 upon which HGP relies for installing the pipeline, have obtained or have a reasonable
39 likelihood of obtaining all permits and approvals they will require.

40
41 **Conclusion.** The Council finds that Holders meet the requirement of OAR 345-022-
42 0010(3), with adoption of a new condition.

43
44 **E.1.1.4 Third-Party Services and Permits, OAR 345-22-010(4)**

45 If the applicant relies on a permit or approval issued to a third party and the third party
46 does not have the necessary permit or approval at the time the Council issues the site

1 certificate, the Council may issue the site certificate subject to the condition that the
2 certificate holder may not commence construction or operation as appropriate until the
3 third party has obtained the necessary permit or approval and the applicant has a contract
4 or other arrangement for access to the resource or service secured by that permit or
5 approval.
6

7 **Discussion.** The Council finds that it does not need to impose additional site certificate
8 conditions relating to obtaining third-party permits because Lamb-Weston already has the
9 necessary easements from its facility to Madison Farms.
10

11 **Conclusion.** The Council finds that HGP meets the requirement of OAR 345-022-
12 0010(4).
13

14 **E.1.2 Financial Assurance Standard, OAR 345-022-0050**

15 To issue a site certificate, the Council must find that the applicant has a reasonable
16 likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an
17 amount adequate to restore the site to a useful, non-hazardous condition if the certificate
18 holder either begins but does not complete construction of the facility or permanently
19 closes the facility before establishing the financial mechanism or instrument described in
20 OAR 345-027-0020(9).
21

22 **Discussion.** The energy facility has already been constructed. The only additional
23 construction necessary under the requested site certification amendment is the on-site pump
24 station and approximately 25,600 feet of reclaimed wastewater pipeline from the energy
25 facility to the booster pump station number one at Madison Farms. The Holders state that
26 construction cost of the land application system is less than 0.01 percent of the original
27 facility construction cost and will not impact their ability to meet the financial assurance
28 standards as determined in the Second Amended Site Certificate.
29

30 **Conclusion.** The Council finds that HGP meets the financial assurance standard, OAR
31 345-022-0050.
32

33 **E.2 Standards Relating to the Site and Structure**

34 **E.2.1 Structural Standard, OAR 345-022-0020**

35 To issue a site certificate, the Council must find that:

- 36 (1) The applicant, through appropriate site-specific study, has adequately characterized
37 the site as to seismic zone and expected ground motion and ground failure, taking
38 into account amplification, during the maximum credible and maximum probable
39 seismic events; and
- 40 (2) The applicant can design, engineer, and construct the facility to avoid dangers to
41 human safety presented by seismic hazards affecting the site that are expected to
42 result from all maximum probable seismic events. As used in this rule "seismic
43 hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami
44 inundation, fault displacement, and subsidence;
- 45 (3) The applicant, through appropriate site-specific study, has adequately characterized
46 the potential geological and soils hazards of the site and its vicinity that could, in the
47

- 1 absence of a seismic event, adversely affect, or be aggravated by, the construction
2 and operation of the proposed facility; and
3 (4) The applicant can design, engineer and construct the facility to avoid dangers to
4 human safety presented by the hazards identified in section (3).
5

6 **Discussion. Elements 1 and 2: Seismic Hazards.** Exhibit G to the original Application
7 for Site Certificate provides the required characterization of the facility site. In addition,
8 Bechtel prepared and submitted a pre-construction geological survey to the Department of
9 Geology and Mineral Industries (“DOGAMI”) for peer review pursuant to Condition
10 IV.B(1) “Structural Standard” of the Site Certificate as amended July 23, 1996. By letter
11 dated August 12, 1994, DOGAMI concluded that no special seismic design considerations
12 beyond those required by the Oregon Building Code are needed to assure the safety of
13 structures critical to public health and safety. The Council finds that there is an absence of
14 noted seismic hazards for the area and that the proposed reclaimed wastewater pipeline will
15 be constructed in compliance with all applicable Oregon Building Codes as required by the
16 Council.

17
18 **Elements 3 and 4: Geological and Soils Hazards.** In addition to the previous
19 described geological surveys, which did not note any other geological or soil hazards for
20 the site or gas line routes, Cascade Earth Sciences performed a detailed soils assessment
21 and geological survey at the proposed land application site. These assessments did not
22 detect any physical hazards that would have to be mitigated before implementation of the
23 proposed modifications. All new reclaimed wastewater lines will be constructed using
24 HDPE piping and will be appropriately bedded according to Oregon Building Code
25 requirements. The pipeline route will pass through established right-of-ways and
26 easements already used for reclaimed wastewater and gas transmission lines.
27

28 The land application site is located on relatively level agricultural land that is not
29 subject to subsurface shifting and sliding. Given the absence of noted geological and soil
30 hazards and given that the reclaimed wastewater pipeline will be constructed in
31 compliance with applicable Oregon Building Codes, The Council finds that there are no
32 geological and soils hazards related to the actions proposed by HGP in this amendment
33 request.
34

35 **Conclusion.** The Council finds that HGP meets the structural standard, OAR 345-022-
36 0020.
37

38 **E.2.2. Soil Protection Standard, OAR 345-022-0022**

39 To issue a site certificate, the Council must find that the design, construction and
40 operation of the facility, taking into account mitigation, is not likely to result in a
41 significant adverse impact to soils including, but not limited to, erosion and chemical
42 factors such as salt deposition from cooling towers, land application of liquid effluent,
43 and chemical spills.
44

45 **Discussion.** The Council adopted the soil protection standard in November 1994, after
46 granting the site certificate in March 1994. The November 1994 rules separated the soil
47 protection standard from what had been part of the structural standard. The original

1 order dealt with soils and structure in the discussion of the structural standard. This
2 amendment addresses them separately, consistent with current rules.

3
4 **Pipeline Impacts** The direct disturbance of soils will be from the construction of the
5 buried pipeline from the energy facility to booster station number one on Madison Farms.
6 That disturbance will be temporary and will occur entirely within an existing pipeline
7 easement held by Lamb-Weston, on industrial land owned by HGP or Lamb-Weston, or
8 on cultivated cropland. As discussed above, the Holders requested an expedited review
9 of this amendment request so that they could coordinate construction of the pipeline with
10 pipeline repair and replacement work by Lamb-Weston, thereby avoiding having to
11 disturb the soils twice.

12
13 In Section D.1.1, the Holders proposed a new Condition IV.B(7) under the
14 “Structural Standard” section of the site certificate. The condition addresses segregation
15 of topsoils and subsoils during pipeline construction. The Council adopts the condition
16 with minor changes, as noted above.

17
18 **Land Application Impacts.** The soil erodibility at the Madison Farms land application
19 facility (MFLAF) is listed in the Umatilla County soil survey (USDA, 1988) as moderate
20 with slopes ranging from 1 percent to 7 percent. The site is currently being used to grow
21 a range of sprinkler irrigated crops. The Holders report there is no water runoff/erosion
22 from the existing crop circles. The substitution of reclaimed wastewater for fresh water
23 as a small portion of the crop water requirement should not significantly change the
24 current water balance and therefore not change the runoff/erosion potential.

25
26 The irrigation application rates of the pivots are between 0.015 and 0.03 inches
27 per hour. The soils at the site have a maximum water infiltration rate of 0.3 inches per
28 hour (USDA, 1990). The application rates are much less than the infiltration rate and,
29 therefore, should not change the runoff/erosion status of the site. The substitution of
30 reclaimed wastewater for a portion of the water application should not impact drainage.
31 However, the WPCF permit will require that HGP perform soil tests twice a year with the
32 potential to reduce sampling frequency to once a year after the first two years to
33 determine that the leaching fraction is adequate and that sodium build-up is not
34 occurring. Excess sodium in the soil can lead to a change in the water infiltration rate by
35 reducing the maximum rate.

36
37 The addition to the soil of the reclaimed wastewater and its effect on the salinity
38 of the soil is addressed in detail in the discussion of the WPCF permit in Section E.4.1
39 and Attachment B. Soil protection will be enforced under the WPCF permit for as long
40 as HGP relies on land application under the WPCF permit.

41
42 The Council finds that the application of reclaimed wastewater from HGP to the
43 731 acres of Madison Farms will not result in significant adverse impact to the soils
44 including erosion, drainage, or salt deposition when HGP complies with the WPCF
45 permit.

46

1 **Conclusion.** The Council finds that HGP meets the soil protection standard, OAR 345-
2 022-0022, subject to a new condition.

3
4 **E.2.3 Land Use Standard, OAR 345-022-0030(2)(a)**

5 (1) To issue a site certificate, the Council must find that the facility complies with the
6 statewide planning goals adopted by the Land Conservation and Development
7 Commission.

8 (2) The Council shall find that a proposed facility complies with section (1) if:

9 (a) The applicant elects to obtain local land use approvals under ORS
10 469.504(1)(a) and the Council findss that the facility has received local land
11 use approval under the acknowledged comprehensive plan and land use
12 regulations of the affected local government; or

13 (b) The applicant elects to obtain a Council determination under ORS
14 469.504(1)(b) and the Council determines that:

15 (A) The proposed facility complies with applicable substantive criteria as
16 described in section (3) and the facility complies with any Land
17 Conservation and Development Commission administrative rules and
18 goals and any land use statutes directly applicable to the facility under
19 ORS 197.646(3);

20 (B) For a proposed facility that does not comply with one or more of the
21 applicable substantive criteria as described in section (3), the facility
22 otherwise complies with the statewide planning goals or an exception
23 to any applicable statewide planning goal is justified under section (4);
24 or

25 (C) For a proposed facility that the Council decides, under sections (3) and
26 (6), to evaluate against the statewide planning goals, the proposed
27 facility complies with the applicable statewide planning goals or that
28 an exception to any applicable statewide planning goal is justified
29 under section (4).
30

31 **Discussion.** The Holders elected to obtain a Council determination of compliance with
32 the statewide planning goals under ORS 469.504(1)(b) by demonstrating that the
33 proposed facility complies with all applicable substantive criteria. Compliance with the
34 Council's Land Use Standard is discussed in Attachment C.
35

36 Based on the analysis in Attachment C, the Council finds that Holders have
37 demonstrated compliance with the applicable criteria in Umatilla County's acknowledged
38 comprehensive plan and land use regulations that are required by the statewide planning
39 goals and in effect on the date the request for amendment was submitted, as well as the
40 Land Conservation and Development Commission administrative rules and goals and any
41 land use statutes directly applicable to the facility under ORS 197.646(3).

42 **Conclusion.** The Council finds that HGP meets the land use standard, OAR 345-022-
43 0030.
44

45 **E.3 Standards Relating to the Impacts of Construction, Operation and**
46 **Retirement**
47

1 **E.3.1 Protected Area Standard, OAR 345-022-0040**

2 (1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate
3 for a proposed facility located in the areas listed below. To issue a site certificate, the
4 Council must find that, taking into account mitigation, the design, construction and
5 operation of a proposed facility located outside the areas listed below is not likely to
6 result in significant adverse impact to the areas listed below. Cross-references in this
7 rule to federal or state statutes or regulations are to the version of the statutes or
8 regulations in effect as of the effective date of this rule [September 1, 2000]: ***
9

10 **Discussion.** The bracketed date in the rule shows the anticipated revisions that went into
11 effect on November 20, 2000. That was after the Council issued a temporary order, but
12 before it issued a final order for this amendment request.
13

14 Exhibit J of the original Application for Site Certificate identified the nearest
15 “protected area” to the site is the Hermiston Agricultural Research and Extension Center,
16 located approximately four miles east of the energy facility site. The Echo Meadows
17 Oregon Trail Site is also located within several miles southeast of the proposed reclaimed
18 wastewater pipeline. The only new construction proposed under this amendment, the on-
19 site reclaimed wastewater pump station and the pipeline, will not be located within a
20 protected area. The pipeline will be buried, and therefore would not have a significant
21 adverse impact on the Hermiston Agricultural Research and Extension Center, the Echo
22 Meadows Oregon Trail Site, or any other designated protected area. In addition,
23 activities associated with the operation of the proposed land application system are the
24 same as currently performed on the site (agricultural irrigation).
25

26 **Conclusion.** The Council finds that HGP meets the protected areas standard, OAR 345-
27 022-0040.
28

29 **E.3.2 Fish and Wildlife Habitat Standard, OAR 345-022-0060**

30 To issue a site certificate, the Council must find that the design, construction, operation
31 and retirement of the facility, taking into account mitigation, is consistent with the fish
32 and wildlife habitat mitigation goals and standards of OAR 635-415-030 [OAR-635-415-
33 0025 in effect as of September 1, 2000].
34

35 The Council began a rulemaking to amend OAR 345-022-0060 in September
36 2000. The Council adopted amendments to OAR 345-022-0060 on November 17, 2000,
37 and the rule became effective on November 20, 2000. However, the Council issued the
38 temporary order to amend the site certificate (see OAR 345-027-0080(5)) before the
39 amended rule took affect. Therefore, in this order the Council evaluates the proposed
40 changes to the HGP facility under both the April 1999 Fish and Wildlife Standard and the
41 November 2000 amended standard. (The bracketed section of the rule above shows the
42 language of the revised rule, which includes a change to the referenced rule number.)
43

44 **Discussion. Analysis Under OAR 345-022-0060 (April 1999).** Under the April 1999
45 standard the Council must find that “the design, construction, operation and retirement of
46 the facility, taking into account mitigation, is consistent with the fish and wildlife habitat
47 mitigation goals and standards of OAR 635-415-030.” OAR 635-415-030 describes four

1 categories of habitat in order of their importance to fish and wildlife. The rule then sets
2 mitigation goals and corresponding implementation standards for each habitat category.

3
4 The proposed new on-site reuse water pump station would be constructed on the
5 energy facility site within the fenced boundary. The area now supports HGP power
6 generation and related equipment and is Habitat Category 4, which is “of low value to
7 fish and wildlife.” The mitigation goal is to minimize the loss of fish and wildlife habitat
8 value. Due to the developed and industrial use of the site, construction of the pump
9 station would have no adverse impact on fish and wildlife habitat.

10
11 The proposed reclaimed wastewater disposal pipeline route does not cross, and
12 would not affect, any jurisdictional wetlands, streams or creeks. It does not cross any
13 areas that now support native vegetation. Habitat types along the proposed route include
14 disturbed low shrub or shrub-grasslands (Category 4), irrigated and non-irrigated
15 croplands (Category 4), rural residential land (Category 4), industrial land (Category 4),
16 irrigation canal, which supports some narrow zones of emergent vegetation (Category 4)
17 and irrigated pasture (Category 3). Category 3 is “habitat of high to medium value ... and
18 is abundant statewide or within the physiographic province.” The goal is no net loss of
19 either habitat value or habitat units. Mitigation may be provided by measures that are in-
20 kind or out-of-kind and on-site or off-site.

21
22 The impacts of construction would be confined to a 30-foot wide construction
23 zone. Construction would take place during late fall or winter when sensitive bird
24 species would not be nesting. Holders agree to restore areas of existing vegetation and
25 agricultural pastures and croplands to their previous condition. These measures should
26 result in no net loss of Category 3 Habitat and should minimize the loss of fish and
27 wildlife habitat value of Category 4 Habitat.

28
29 The land application of HGP facility reclaimed wastewater would be on lands that
30 are zoned Exclusive Farm Use (EFU) and are now under cultivation. The land
31 application of reclaimed wastewater would not change how these lands are managed nor
32 would it add new lands to crop production.

33
34 The Council adopts the following conditions to ensure that HGP and its agents
35 construct and operate the reclaimed wastewater disposal pipeline consistently with the
36 Holder’s representations in support of their request for a fifth amendment.

37
38 IV.B“Fish and Wildlife Standard”

39 (8) Holders shall begin and complete construction of the reclaimed wastewater
40 disposal pipeline during late fall or winter of 2000/2001. Holders shall restore
41 areas of existing vegetation and pastures to their preconstruction conditions using
42 plant species that are appropriate to the location and acceptable to the land owner.
43 Holders shall not allow construction activity to affect adversely the Umatilla
44 River or its associated vegetation. [Amendment No. 5]
45

1 IV.B “Fish and Wildlife Standard”

2 (9) Holders shall ensure that reclaimed wastewater from the HGP is land
3 applied only on lands that were under cultivation in 2000. [Amendment No. 5]

4
5 **Conclusion.** The Council finds that HGP meets the Council’s fish and wildlife standard,
6 OAR 345-022-0060 (April 1999), subject to two new conditions.

7
8 **Analysis Under OAR 345-022-0060 (November 2000).** Under the revised fish and
9 wildlife standard, the Council must find that “the design, construction, operation and
10 retirement of the facility, taking into account mitigation, is consistent with the fish and
11 wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of
12 September 1, 2000.” The Oregon Fish and Wildlife Commission adopted OAR 635-415-
13 0025 in Spring 2000. The new rule amends former OAR 635-415-030 to describe six
14 (rather than four) categories of habitat in order of their importance to fish and wildlife.
15 The rule then sets mitigation goals and corresponding implementation standards for each
16 habitat category.

17
18 Under the amended standard, the proposed new on-site reuse water pump station
19 would be Habitat Category 6, which is “habitat that has low potential to become essential
20 or important habitat for fish and wildlife.” (New Category 6 is similar to the former
21 Category 4.) The mitigation goal is to minimize impacts. Due to the developed and
22 industrial use of the site, construction of the pump station would have no adverse impact
23 on fish and wildlife habitat.

24
25 Under the amended standard, the habitat types along the proposed route of the
26 reclaimed wastewater disposal pipeline would be as follows: disturbed low shrub or
27 shrub-grasslands (new Category 4 or 6), irrigated and non-irrigated croplands (new
28 Category 4 or 6), rural residential land (new Category 6), industrial land (new Category
29 6), irrigation canal which supports some narrow zones of emergent vegetation (new
30 Category 4) and irrigated pasture (new Category 4). New Category 4 is “important
31 habitat for fish and wildlife species.” The goal is no net loss of either habitat quantity or
32 habitat quality. Mitigation may be provided by measures that are in-kind or out-of-kind
33 and in-proximity or off-proximity. (New Category 4 is similar to the former Category 3.)

34
35 The impacts of construction would be confined to a 30-foot wide construction
36 zone. Construction would take place during late fall or winter when sensitive bird
37 species would not be nesting. Holders agree to restore areas of existing vegetation and
38 agricultural pastures and croplands to their previous condition. These measures should
39 result in no net loss of new Category 4 Habitat and should minimize the loss of fish and
40 wildlife habitat value of new Category 6 Habitat.

41
42 The land application of HGP facility reclaimed wastewater would be on lands that
43 are zoned Exclusive Farm Use and are now under cultivation. The land application of
44 reclaimed wastewater would not change how these lands are managed nor would it add
45 new lands to crop production.

1 The Council adopts the following conditions to ensure that HGP and its agents
2 construct and operate the reclaimed wastewater disposal pipeline consistently with the
3 Holder’s representations in support of their request for a fifth amendment.
4

5 IV.B “Fish and Wildlife Standard”

6 (8) Holders shall begin and complete construction of the reclaimed
7 wastewater disposal pipeline during late fall or winter of 2000/2001. Holders
8 shall restore areas of existing vegetation and pastures to their preconstruction
9 conditions using plant species that are appropriate to the location and acceptable
10 to the land owner. Holders shall not allow construction activity to affect
11 adversely the Umatilla River or its associated vegetation. [Amendment No. 5]
12

13 IV.B “Fish and Wildlife Standard”

14 (9) Holders shall ensure that reclaimed wastewater from the HGP is land
15 applied only on lands that were under cultivation in 2000. [Amendment No. 5]
16

17 **Conclusion.** The Council finds that HGP meets the fish and wildlife standard, OAR 345-
18 022-0060 (November 2000), subject to two new conditions.
19

20 **E.3.3 Threatened and Endangered Species Standard, OAR 345-022-0070**

21 To issue a site certificate, the Council, after consultation with appropriate state agencies,
22 must find that:

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

26 (a) Is consistent with the protection and conservation program, if any, that the
27 Oregon Department of Agriculture has adopted under ORS 564.105(3); or

28 (b) If the Oregon Department of Agriculture has not adopted a protection and
29 conservation program, is not likely to cause a significant reduction in the
30 likelihood of survival or recovery of the species; and

31 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as
32 threatened or endangered under ORS 496.172(2), the design, construction, operation and
33 retirement of the proposed facility, taking into account mitigation, is not likely to cause a
34 significant reduction in the likelihood of survival or recovery of the species.
35

36 **Discussion.** Field surveys prepared by consultants to HGP of the proposed pipeline route
37 did not locate any plant species listed by ODA as threatened or endangered.
38

39 Based on the reports supplied by the Holders, the Council knows of no wildlife
40 species listed as threatened or endangered by the Oregon Fish and Wildlife Commission
41 (OFWC) that occur along, or regularly use, the proposed pipeline route based on field
42 surveys and available information. This includes the Washington ground squirrel that the
43 OFWC listed as endangered in January 2000.
44

45 Migrating and wintering bald eagles are known to use the Umatilla River and
46 uplands in the general project area. The Council finds that it is unlikely that the proposed
47 pipeline construction and land application of HGP reclaimed wastewater would adversely

1 affect bald eagles. Eagles do not nest near either of these areas. Eagles do not regularly
2 use, or rely upon the areas that would be affected by the proposed activities.

3
4 The proposed activities would have no affect on the Umatilla River or its
5 associated riparian habitat. The majority of the pipeline route crosses open country,
6 gravel roads and farmland. No large trees, with the possible exception of one large
7 cottonwood tree located on Lamb-Weston’s property, would be removed. Pipeline
8 construction and land application are typical activities in the area.

9
10 The OFWC has listed several fish species that occur in the Columbia River in the
11 vicinity of Umatilla. The Umatilla River in the vicinity of the proposed project provides
12 habitat for the Middle Columbia River steelhead, which has been listed as threatened by
13 the National Marine Fisheries Service (NMFS). The proposed pipeline and land
14 application would not affect the HGP facility’s water consumption and would not involve
15 disturbance to either the Columbia or Umatilla Rivers.

16
17 **Conclusion.** The Council finds that HGP meets the threatened and endangered species
18 standard, OAR 345-022-0070.

19
20 **E.3.4 Scenic and Aesthetic Standard, OAR 345-022-0080**

21 To issue a site certificate, the Council must find that the design, construction, operation
22 and retirement of the facility, taking into account mitigation, is not likely to result in
23 significant adverse impact to scenic and aesthetic values identified as significant or
24 important in applicable federal land management plans or in local land use plans in the
25 analysis area.

26
27 **Discussion.** The energy facility has already been constructed. The only additional
28 construction necessary under the requested site certification amendment is the on-site pump
29 station and the underground reclaimed wastewater pipeline from the energy facility to
30 booster station number one on Madison Farms. The pump station will be a minor addition
31 within the energy facility complex and will not affect the overall visual impact of the facility.
32 The pipeline will be below ground and not visible, except during the short period required
33 for construction. Finally, the land application fields are already improved with center pivots
34 and used for crop production consistent with surrounding land use. There will be no visible
35 changes to the land application site.

36
37 **Conclusion.** The Council finds that HGP meets the scenic and aesthetic values standard,
38 OAR 345-022-0080.

39
40 **E.3.5 Historic, Cultural and Archeological Resources Standard, 345-022-0090**

41 To issue a site certificate, the Council must find that the construction, operation and
42 retirement of the facility, taking into account mitigation, is not likely to result in
43 significant adverse impacts to:

- 44 (1) Historic, cultural or archaeological resources that have been listed on, or
45 would likely be listed on the National Register of Historic Places;
46 (2) For a facility on private land, archaeological objects, as defined in ORS
47 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

1 (3) For a facility on public land, archaeological sites, as defined in ORS
2 358.905(1)(c).
3

4 **Discussion.** As discussed in the original ASC, Heritage Research Associates surveyed the
5 energy facility site and gas pipeline route to determine the historical, cultural, and
6 archaeological resources. It did not identify any historic, cultural or archaeological resources
7 that were listed on state or federal registers. It did identify the West Extension Irrigation
8 Canal, which may be eligible for listing.
9

10 It is not likely that construction, operation, or retirement of the new pump station on
11 the energy facility site or the new underground reclaimed wastewater line, which parallels
12 the gas transmission line for much of the route, would result in significant impacts to such
13 resources. The wastewater pipeline will be placed within an existing pipeline easement held
14 by Lamb-Weston or on cultivated farmland (Madison Farms), both of which have been
15 previously disturbed. The land application site at Madison Farms has already been actively
16 farmed in established center pivot circles, and no changes or new construction in this area
17 are proposed.
18

19 In addition, construction of the new facilities will be subject to the applicable site
20 certificate conditions under the historic, cultural and archaeological standard. These require
21 tribal notification prior to construction, and protection of any cultural or archaeological
22 resources discovered during construction. Two of these conditions, (4) and (5), as currently
23 written are specific to construction of the related or supporting transmission line and would
24 not apply to the requested wastewater pipeline. The Council amends one of these conditions
25 to include construction of the wastewater pipeline as shown below. The new language that
26 the Council adopts is shown with double underline.
27

28 IV.B “Historic, Cultural and Archaeological Standard”

29 (4) Holder shall take all reasonable steps to avoid disturbance of the West
30 Extension Irrigation Canal during construction and operation of the transmission
31 line by ensuring that transmission towers/poles are placed away from the canal
32 banks, and by avoiding any disturbance at the canal crossing when electrical line
33 are strung. Holder shall take all reasonable steps to avoid disturbance to
34 Westland Irrigation District canals during construction and operation of the
35 wastewater pipeline to Madison Farms. [Amendment No. 5]
36

37 **Conclusion.** The Council finds that HGP meets the historic, cultural, and archeological
38 resources standard, OAR 345-022-0090, subject to a revised condition.
39

40 **E.3.6 Recreation Standard, OAR 345-022-0100**

41 To issue a site certificate, the Council must find that the design, construction and
42 operation of a facility, taking into account mitigation, is not likely to result in a
43 significant adverse impact to important recreational opportunities in the analysis area.
44 The Council shall consider the following factors in judging the importance of a
45 recreational opportunity:

- 46 (1) Any special designation or management of the location;
47 (2) The degree of demand;
-

- 1 (3) Outstanding or unusual qualities;
- 2 (4) Availability or rareness;
- 3 (5) Irreplaceability or irretrievability of the opportunity.

4

5 **Discussion.** The only new structures associated with the requested site certificate
6 amendment are the underground reclaimed wastewater pipeline and the on-site water pump
7 station. These facilities will not be located on land zoned or used for recreation. The
8 pipeline, moreover, will be buried and, therefore, would not interfere with recreational use of
9 the ground surface. Since no land use changes will occur, the Council finds that the
10 requested amendment will not have any significant adverse impacts to important recreational
11 opportunities in the area.

12

13 **Conclusion.** The Council finds that HGP meets the recreation standard, OAR-345-022-
14 0100.

15

16 **E.3.7 Socio-Economic Impacts Standard, OAR 345-022-0110**

17 To issue a site certificate, the Council must find that the construction and operation of the
18 facility, taking into account mitigation, is not likely to result in significant adverse impact
19 to the ability of communities within the analysis area to provide the following
20 governmental services: sewers and sewage treatment, water, storm water drainage, solid
21 waste management, housing, traffic safety, police and fire protection, health care and
22 schools.

23

24 **Discussion.** The requested amendment involves only the addition of a pipeline and a
25 reclaimed wastewater pump station at the energy facility and land application of reclaimed
26 wastewater. Construction impacts will be limited and temporary, and these changes are
27 not anticipated to affect the number of permanent employees at the facility, or affect the
28 provisions of any government services. The application of reclaimed wastewater is
29 supplemental to an existing center pivot irrigation system.

30

31 Local contractors and workers will construct the pipeline and other improvements
32 to the extent possible. The Holders anticipate that fewer than 30 workers will be required
33 to construct this system. The purpose of expediting this amendment request, moreover, is
34 to allow installation of the pipeline to occur and the same time Lamb-Weston is replacing
35 an existing pipeline within the same ditch and easement. This coordination minimizes all
36 impacts associated with construction.

37

38 The project construction requirements are substantially less than that included in
39 the original Final Order. The Council finds that the amendments should not have adverse
40 socioeconomic impacts to communities identified in the Application for Site Certificate
41 and referenced in the amended site certificate.

42

43 **Conclusion.** The Council finds that HGP meets the socio-economic impacts standard,
44 OAR 345-022-0110.

45

46 **E.3.8 Waste Minimization Standard, OAR 345-022-0120**

47 To issue a site certificate, the Council must find that, to the extent reasonably practicable:

1 (1) The applicant’s solid waste and wastewater plans are likely to minimize
2 generation of solid waste and wastewater in the construction, operation, and
3 retirement of the facility, and when solid waste or wastewater is generated, to
4 result in recycling and reuse of such wastes;

5 (2) The applicant’s plans to manage the accumulation, storage, disposal and
6 transportation of waste generated by the construction and operation of the facility
7 are likely to result in minimal adverse impact on surrounding and adjacent areas.
8

9 **Discussion.** The use of the reclaimed wastewater to augment the irrigation requirements
10 of agricultural production is a beneficial reuse of water resources. In addition, the
11 impacts of using this reclaimed wastewater will be minimal to surrounding and adjacent
12 land. The Holders must comply with the Waste Minimization conditions of the amended
13 site certificate. The Holders also propose a new condition related to waste minimization and
14 the WPCF permit, as noted in Section D.1.1 above.
15

16 **Conclusion.** The Council finds that HGP meets the waste minimization standard, OAR
17 345-022-0120.
18

19 **E.3.9 Retirement Standard, OAR 345-022-0130**

20 To issue a site certificate, the Council must find that the site, taking into account
21 mitigation, can be restored adequately to a useful, non-hazardous condition following
22 facility retirement.
23

24 **Discussion.** Installation of the new pump station at the energy facility site and the new
25 reclaimed wastewater pipeline from the energy facility site to Madison Farms will not
26 create a hazardous condition that would affect the Holders’ ability to retire the facility.
27 Furthermore, land application of the reclaimed wastewater at Madison Farms will be in
28 compliance with a current WPCF permit, which will prevent hazardous conditions from
29 occurring from that activity.
30

31 **Conclusion.** The Council finds that HGP meets the retirement standard, OAR 345-022-
32 0130.
33

34 **E.3.10 OAR 345-0240-0550, Carbon Dioxide Standard**

35
36 **Discussion.** This amendment request does not affect the carbon dioxide emissions from
37 the facility.
38

39 **Conclusion.** The Council finds that the carbon dioxide standard does not apply to HGP’s
40 request for amendment number five.
41

42 **E.4 Other Standards**

43 44 **E.4.1 Water Pollution Control Facility Permit**

45 The Holders request to discharge reclaimed wastewater from the facility directly
46 to lands owned by Madison Farms. Under state law, the disposal of reclaimed
47 wastewater directly to the land surface (often referred to as “land application”) requires a

1 WPCF permit from DEQ. In order for DEQ to approve a request for a WPCF permit, the
2 proposed land application must comply with applicable statutes and rules and standards
3 adopted by DEQ (OAR Chapter 340, Division 40, and OAR 340-041-0642 to -0655).
4 Because the HGP is under Council jurisdiction and because the Holders' request for a
5 WPCF permit requires an amendment to the site certificate for that energy facility, the
6 Council must determine that the applicable DEQ rules and standards are met.

7
8 In consultation with the Office, DEQ reviewed the Holders' request for a WPCF
9 permit. Following its review, DEQ advised the Office that land application of
10 wastewater is a feasible treatment method provided that it is performed in a controlled
11 manner that protects the environment. DEQ recommended that land application of the
12 HGP's wastewater be approved, subject to a number of conditions that DEQ submitted to
13 the Council as part of its evaluation and its proposed permit conditions. DEQ's
14 proposed WPCF permit is Attachment A and its permit evaluation report is Attachment
15 B. The Council makes Attachment A to this order to be Attachment A to the Thermal
16 Power Plant Third Amended Site Certificate for the Hermiston Generating Project.

17
18 The proposed WPCF contains a number of conditions designed to prevent
19 unacceptable environmental impacts from the proposed land application. In accordance
20 with OAR 340, Division 40, the permit includes ongoing monitoring requirements and
21 requires HGP to perform a hydrogeological characterization and implement a
22 groundwater monitoring program, if the monitoring or other information indicates that
23 the operation has the potential to impact groundwater. DEQ also has the authority to
24 reopen and modify the permit as necessary to address changing conditions or standards
25 and new information.

26
27 DEQ encourages facilities to provide for storage of wastewater during winter
28 months when the weather does not allow for land application. HGP did not propose
29 structures for storage of wastewater. As a result, the performance monitoring is designed
30 in part to evaluate whether winter operations will be allowed. Although the WPCF
31 permit already prohibits discharge to the land application site under certain conditions,
32 DEQ could later require amendment of the WPCF in accordance with the state
33 groundwater protection standards. The Council finds that because HGP has the ability to
34 recycle cooling water for up to 1 to 2 weeks, and has both the reclaimed wastewater line
35 to Lamb-Weston and the zero discharge system in place as backup systems, if needed,
36 HGP should be able to maintain compliance with the permit and applicable state
37 standards.

38
39 In Section D.1.1, the Holders proposed Conditions IV.B (6) and (7)
40 "Organizational, Managerial and Technical Expertise Standard." The Council modifies
41 HGP's proposed Condition IV.B(6) to: 1) require that the Holders obtain a WPCF permit
42 prior to beginning construction (rather than operation) of the wastewater pipeline (as
43 required by DEQ rules); 2) to require that the Holders operate the pump and pipeline in
44 compliance with the terms and conditions of the WPCF permit; and, 3) to make clear that
45 DEQ will have enforcement authority over the WPCF permit.

1 (6) Prior to construction, installation or operation of the pump station and
2 reclaimed wastewater pipeline, the Holders shall pay all required fees and obtain
3 a Water Pollution Control Facilities (WPCF) permit allowing the discharge of
4 reclaimed wastewater on the designated land application fields. The WPCF shall
5 be substantially in the form of Attachment A. Holders shall operate the pump
6 station and reclaimed wastewater pipeline in full compliance with the terms and
7 conditions of an effective WPCF permit. All reclaimed wastewater conveyed
8 from the energy facility to Madison Farms for irrigation use shall comply with all
9 terms and conditions of the WPCF permit. DEQ shall continue to exercise
10 enforcement over all WPCF permits applicable to Holders discharges from the
11 reclaimed wastewater pipeline. Notwithstanding WPCF Exhibit F, Section A.4,
12 the permit shall not be transferred without prior approval by EFSC pursuant to
13 OAR 345-027-0100. [Amendment No. 5]
14

15 The Council modifies proposed Condition IV.B(7) to read as follows:

16 (7) Holders shall take all measures necessary to ensure that construction,
17 installation, modification and operation of the pump station, and reclaimed wastewater
18 pipeline are in full compliance with the WPCF permit, including but not limited to the
19 following:

20 (a) Prior to commencing operation of the reclaimed wastewater pipeline,
21 have in place a contract with Madison Farms to accept and manage the
22 reclaimed wastewater flow and land application of reclaimed wastewater
23 in full compliance with the terms and conditions of the WPCF permit
24 issued to Holders by DEQ. The Holders shall maintain such contracts in
25 effect so long as Holders rely on the WPCF permit;

26 (b) Prior to commencing operation of the reclaimed wastewater pipeline,
27 have in place a contract with Lamb-Weston that affords Holders full
28 access to the reclaimed wastewater pipeline as necessary to ensure full
29 compliance with the terms and conditions of the WPCF permit issued to
30 Holders by DEQ as long as Lamb-Weston owns the reclaimed wastewater
31 pipeline upon which the Holders rely. [Amendment No. 5]

32 **Conclusion.** The Council finds that HGP complies with the applicable requirements for
33 a WPCF permit, subject to the conditions in this order and in Attachment A, and the
34 Council authorizes DEQ to issue a WPCF permit to the Holders substantially as shown in
35 Attachment A.

36
37 **E.4.2 Noise OAR 340-035-0035(1)(a)**

38 The Council applies and enforces the DEQ’s noise standards for energy facilities
39 under its jurisdiction. The applicable standard for an existing facility is:

40
41 Existing Noise Sources. No person owning or controlling an existing industrial or
42 commercial noise source shall cause or permit the operation of that noise source if the
43 statistical noise levels generated by that source and measured at an appropriate

1 measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified
2 in Table 7, except as otherwise provided in these rules.

3
4 **Discussion.** The requested amendment would not change the operation of the energy
5 facility in a manner that would have an impact on noise emissions. Although some noise
6 would be generated during the construction of the energy facility, construction noise is
7 not subject to the standards of OAR 340-035-0035. The Holders must comply with the
8 existing conditions of the amended site certificate regarding noise, including the
9 requirement to “consult with Umatilla County and the City of Umatilla and with
10 neighbors to the energy facility to minimize the impacts of construction noise.” They
11 must also “take all reasonable precautions to minimize dust and noise during
12 construction.”

13
14 Furthermore, the effect of OAR 345-035-0035(1)(a) is the same as the effect of
15 OAR 345-035-0035(1)(b)(B), upon which the Council based its findings for the original
16 order. Although the two rules refer to different tables—Tables 7 and Table 8—the
17 content of the tables is the same. The standard that the facility must meet is the same.

18
19 **Conclusion.** The Council finds that HGP meets the noise standard, OAR 340-035-
20 0035(1)(a).

21 22 **E.4.2 Water Rights and Notification, ORS. 537.132**

23 Because the facility is using reclaimed water, as defined in ORS 537.131, for land
24 application, it does not require a water right if it meets the exemption requirements from a
25 water right permit, pursuant to ORS 537.132.

26 537.131 Reclaimed water.

27
28 As used in ORS 537.132, 540.510 and 540.610, “reclaimed water” means water that has
29 been used for municipal purposes and after such use has been treated in a treatment works
30 as defined in ORS 454.010, and that, as a result of treatment, is suitable for a direct
31 beneficial purpose or a controlled use that could not otherwise occur.

32 537.132 Exemption from permit requirement for reclaimed water.

33 (1) The provisions of ORS 537.130 requiring application for a permit to appropriate
34 water shall not apply to the use of reclaimed water, if:

35 (a) The use of reclaimed water is authorized by the national pollutant discharge
36 elimination system or water pollution control facilities permit issued pursuant to ORS
37 468B.050 or 468B.053;

38 (b) The Department of Environmental Quality, in reviewing an application for a permit
39 pursuant to ORS 468B.050 or 468B.053, has consulted with the State Department of Fish
40 and Wildlife on the impact to fish and wildlife to determine that the application of
41 reclaimed water under ORS 537.130, 537.131, 537.132, 540.510 and 540.610 shall not
42 have a significant negative impact on fish and wildlife; and

43 (c) The Department of Environmental Quality has determined the use of reclaimed water
44 is intended to improve the water quality of the receiving stream.
45
46

1 ORS 454.010(5)

2 (a) "Treatment works" means any devices and systems used in the storage, treatment,
3 recycling, and reclamation of municipal sewage or industrial wastes, of a liquid nature,
4 necessary to recycle or reuse water at the most economical cost over the estimated life of
5 the works, including intercepting sewers, outfall sewers, sewage collection systems,
6 pumping, power, and other equipment, and their appurtenances; extensions,
7 improvements, remodeling, additions, and alterations thereof; elements essential to
8 provide a reliable recycled supply such as standby treatment units and clear well
9 facilities; and any works, including site acquisition of the land that will be an integral part
10 of residues resulting from such treatment.

11 (b) In addition to the definition contained in paragraph (a) of this subsection, "treatment
12 works" means any other method or system for preventing, abating, reducing, storing,
13 treating, separating, or disposing of municipal waste, including storm water runoff, or
14 industrial waste, including waste in combined storm water and sanitary sewer systems.
15

16 **Discussion.** The Council finds that HGP wastewater, which came originally to the
17 facility from a municipal surface water source, is reclaimed water pursuant to ORS
18 537.131. The Council finds that HGP meets the requirement of (1)(a) through the
19 Council's decision to direct DEQ to issue a WPCF pursuant to this amendment request.
20 It meets the requirements of (1)(b) through the Council' review of the application
21 pursuant to its fish and wildlife habitat standard in Section E.3.2, above, which the
22 Council conducted in consultation with the Department of Fish and Wildlife. Paragraph
23 (1)(c) is not applicable because there is no discharge into a stream.
24

25 The Council adopted the following condition in Section IV.B, "Waste
26 Minimization Standard" of the "Thermal Power Plant [Temporary] Third Amended Site
27 Certificate:
28

29 (7) HGP shall file a reclaimed water registration form with the Water Resources
30 Department, pursuant to ORS 537.132(2). [Amendment No. 5]
31

32 However, subsequent discussion between WRD and Office staff clarified that the
33 user of the reclaimed wastewater is the recipient, which will be Madison Farms. It is the
34 responsibility of Madison Farms as the user to file a municipal reclaimed water
35 registration form with the Water Resources Department. Therefore, the Council modifies
36 Condition (7) as follows:
37

38 (7) HGP shall ensure that the user of its reclaimed wastewater files a municipal
39 reclaimed water registration form with the Water Resources Department, pursuant
40 to ORS 537.132(2). [Amendment No. 5]
41

42 **Conclusion.** The Council finds that HGP does not require a water right permit to dispose
43 of its reclaimed wastewater derived from its municipal surface water source. However,
44 HGP has a responsibility to ensure that the user of the reclaimed wastewater files a
45 municipal reclaimed water registration form with the Water Resources Department.
46

1 **F. Effects of Ballot Measure 7**

2 After the Office circulated the proposed temporary order on November 7, 2000,
3 Oregon voters approved Ballot Measure 7 in the 2000 general election. The measure is a
4 constitutional amendment that requires, with limited exceptions, compensation for
5 regulations that restrict the use of real property, where the restriction reduces the value of
6 the real property. The Department of Justice advised the Council at its November 17,
7 2000, meeting that it is preparing legal advice regarding the meaning and application of
8 the measure. The measure is not clear in several important respects, including its
9 application to previously adopted regulations and to regulations setting general health,
10 safety and public welfare requirements. The Department of Justice also advised that the
11 Council should seek a waiver of claims arising under Ballot Measure 7.

12 The Holders agreed at the November 17, 2000, Council meeting to provide such a
13 waiver. In addition, the Holders agreed to provide indemnity against claims of property
14 owners arising out of Ballot Measure 7 in the amount of \$100,000 for the period of the
15 temporary site certificate and to add the following language to the site certificate:

16 **IX. WAIVER AND INDEMNITY**

17 Holders waive any and all claims arising out of or from this Site
18 Certificate under Ballot Measure 7 (2000) (Article 1, section 18, subsections (a)
19 through (f) of the Oregon Constitution) that they may have against the State of
20 Oregon and/or its political subdivisions and agree to indemnify the State of
21 Oregon and/or its political subdivisions in an amount not to exceed \$100,000
22 cumulatively from any such claims that may arise or accrue to an owner of real
23 property affected by this Site Certificate.

24
25 The Council included the agreed language in the temporary site certificate that the
26 parties signed on November 17, 2000. On December 6, 2000, Marion County Circuit
27 Court enjoined the Secretary of State from certifying the votes on Measure 7, staying the
28 effective date. The matter has not been resolved by the Courts as of the date of this
29 Council order. Therefore, the Council finds that the waiver and indemnity condition
30 included in the temporary order and temporary site certificate should be removed from
31 the Third Amended Site Certificate for the Hermiston Generating Project.

32
33 **G. Conclusions**

34 The Council finds that the actions in the Holders' request are consistent with
35 current Council rules, with other applicable statutes and rules, and with statewide land
36 use planning goals and would not cause a significant adverse impact to public health and
37 safety or the environment. In preparing this proposed order, the Council has limited its
38 consideration to the effects that may be produced by the proposed change to the facility
39 described in the Holders' Request for Amendment Number Five, dated October 3, 2000,
40 to construct a wastewater pipeline to and discharge its reclaimed wastewater at Madison
41 Farms. In considering those effects, the Council has reviewed state statutes,
42 administrative rules, and local government ordinances.

1 Based on the above findings, the Council concludes that it should amend the site
2 certificate for the Hermiston Generating Project as the Holders request, and as modified
3 herein, and should issue a final order granting an amendment to the site certificate.
4

5 **FINAL ORDER**
6

7 Based on the above findings of fact, discussions and conclusions of law, the
8 Energy Facility Siting Council determines that it shall approve amendment request
9 number five and that the chairperson of the Council shall execute the site certificate
10 amendment in the form of the "Thermal Power Plant Third Amended Site Certificate for
11 the Hermiston Generating Project," including Attachment A. The Council further directs
12 the Oregon Department of Environmental Quality to issue a Water Pollution Control
13 Facilities permit to the Holders that is substantially in the form of Attachment A.
14

15 Ordered this 19th day of January, 2001.
16
17

18 
19

20 _____
21 Karen H. Green, Chair
22 Energy Facility Siting Council
23
24
25

26 **Notice of the Right to Appeal**

27 You have the right to appeal this order to the Oregon Supreme Court pursuant to
28 ORS 469.405. To appeal you must file a petition for judicial review with the Supreme
29 Court within 60 days from the day this order was served on you. If this order was
30 personally delivered to you, the date of service is the date you received this order. If this
31 order was mailed to you, the date of service is the date it was mailed, not the day you
32 received it. If you do not file a petition for judicial review within the 60-day time period,
33 you lose your right to appeal.
34 /
35 /
36 /