

The water use as described in Section II.A.1 remains the same, although the proposed amendment would eliminate the requirement that the facility use water pursuant to a water right permit held by the City of Klamath Falls and would instead allow the use of water pursuant to an existing water right certificate. The source from which the water is withdrawn, the point of appropriation, and the amount of water authorized for use would not change. The proposed amendment does not otherwise alter the description of the facility as set forth in the Site Certificate.

- (c) *A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1).*

Response: Klamath Energy is proposing two changes to the Site Certificate:

Financial Assurance. Klamath Energy seeks to amend the Site Certificate to modify the financial assurance required under Sections III.A.12.vii and IV.D.3, to a new financial assurance amount of \$4,385,000 in 2007 dollars. This amendment relies on the current methodology approved by the Department of Energy (Department), and a table detailing the facility's site restoration cost estimate is attached hereto and incorporated herein as **Exhibit A**.

Water Rights. Klamath Energy seeks to amend the Site Certificate to eliminate the requirement that the facility use water pursuant to a water right permit held by the City of Klamath Falls, and to instead allow the use of water pursuant to an existing water right certificate. Klamath Energy does not seek to change the source from which water is withdrawn, the point of appropriation, or the amount of water authorized for use at the facility in order to meet the facility's service and potable water requirements. Thus, Klamath Energy seeks to amend only the water rights requirements for the facility's operation in Sections IV.O.1 and IV.S.

As background for this change request, the Oregon Water Resources Department issued Certificate of Water Right No. 48602 ("Certificate 48602") to the Weyerhaeuser Company on October 5, 1979. Certificate 48602 authorizes the use of the waters of "Well No. 6" for the purpose of "manufacturing including restroom and lunch room facilities" in an amount up to 1.34 cubic feet per second. Certificate 48602 further describes the authorized well location and authorized place of use. A copy of Certificate 48602 is attached hereto and incorporated herein as **Exhibit B**.

Weyerhaeuser's successor, Collins Products, entered into various agreements with the City of Klamath Falls (the prior Certificate Holder) to provide make-up water to the facility in return for steam and other consideration. At the time the Council issued the Final Order and original Site Certificate in August 1997, however, it was unclear whether use of water by the facility from Well No. 6 was authorized under Certificate 48602 or whether the City was required to obtain a new and separate water right. Given the uncertainty, the Council required the City to

obtain a new water right permit from the Oregon Water Resources Department for operation of the facility (Water Right Permit 13234). As detailed in Section IV.S of the Site Certificate, the water right permit issued by the Water Resources Department authorized the City to use water from the same point of appropriation (Well No. 6), on the same place of use, and at the same rate as was previously and concurrently authorized by the Department pursuant to Certificate 48602.

Before a new water right certificate was issued to the City pursuant to the terms of Water Right Permit 13234, in 1999, the Oregon legislature amended Oregon's water laws by adding ORS 540.520(9), which makes clear that a water right transfer is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

“(a) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

“(b) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

“(c) The person who makes the change in water use provides the following information to the Water Resources Department:

“(A) The name and mailing address of the person using water under the water right;

“(B) The water right certificate number;

“(C) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued; and

“(D) A description of the general industrial use to be made of the water after the change.” ORS 540.520(9).

Thus, the Oregon legislature clarified that when a water right certificate has been issued for a specific industrial use (here, the specific use authorized by Certificate 48602 was “manufacturing including restroom and lunch room facilities”), the use of water for general industrial purposes (here, the operation of the energy facility) was in fact authorized under such water right certificate if the statutory conditions were met.

As a result of this statutory change, on September 10, 2004, Collins Products, as the owner and operator of Well No. 6, sent a letter to the Oregon Water Resources

Department providing the information required by ORS 540.520(9) to change the specific industrial use identified in Certificate 48602 to general industrial use. A copy of the letter is attached hereto and incorporated herein as **Exhibit C**. On May 25, 2006, the Oregon Water Resources Department acknowledged the notification. A copy of the letter is attached hereto and incorporated herein as **Exhibit D**. In sum, the specific to general industrial notification obviated the need for the City (and now the current certificate holder) to maintain a separate water right. As such, Klamath Energy asks that the Site Certificate be modified to eliminate the requirement that the City maintain a separate water right for the use of water from Well No. 6 for the facility.

Under OAR 345-027-0050(1) a certificate holder is required to submit a request to amend a site certificate to design, construct, or operate an energy facility in a manner different from that described in the Site Certificate if the proposed change falls within OAR 345-027-0050(1)(a)-(c). Klamath Energy is obligated to submit this request to amend the Site Certificate as the proposed change falls within OAR 345-027-0050(1)(b) and (c), as described below.

- (a) *Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;*

The proposed changes to the Site Certificate would modify the financial assurance for the facility and allow the use of water at the facility under an existing water right certificate instead of a water right permit held by the City of Klamath Falls, but these changes would not result in a significant adverse impact to any resource protected by applicable standards in OAR chapter 345, divisions 22 and 24.

- (b) *Could impair the certificate holder's ability to comply with a site certificate condition; or*

The proposed changes could impair Klamath Energy's ability to comply with Site Certificate conditions in Section III.A.12.vii and Sections IV.D, O, and S.

- (c) *Could require a new condition or a change to a condition in the site certificate.*

Although the proposed changes do not require new conditions, they do require changes to conditions in the Site Certificate, as discussed in the following section.

- (d) *The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment.*

Response: Klamath Energy proposes to change conditions in Sections III.A.12.vii and IV.D.3 concerning financial assurances, Section IV.O concerning socio-economic impacts, and Section IV.S. concerning water rights. The proposed changes are reflected in the redline of the relevant sections of the Site Certificate, as set forth below.

III.A. Mandatory Conditions in Site Certificates OAR 345-27-020

(12) The transfer of the site certificate from the City to Klamath Energy shall not occur until Klamath Energy delivers to EFSC evidence that:

(vii) Klamath Energy or PPM delivers to the Council a letter of credit in the amount of \$8.6 million that replaces the Termination Fund maintained by the certificate holder to satisfy Conditions IV.D.3, IV.D.4 and IV.D.5. [Amendment 3] The amount of the letter of credit shall be reduced to \$4.385 million (2007 dollars) upon the Council’s approval of Amendment 4. [Amendment 4]

IV.D. Financial Assurance

For conditions 3, 4 and 5 in section IV.D. of this Amended Site Certificate, the index by which the future value of money shall be converted to 2007~~1996 or 1997~~ dollars shall be the Implicit Price Deflator for the Gross Domestic Product as published by the U.S. Bureau of Economic Analysis of the Department of Commerce or a successor agency. These values are published annually each February in the “Economic Report of the President”.

3. Klamath Energy ~~or PPM~~ shall maintain a separate fund established to provide for termination or decommissioning costs (the Decommissioning Fund), with such fund allowed to consist of a balance of cash, Investment Securities, and other holdings to be available to pay costs of termination or decommissioning, including Site restoration, of the project. ~~For the two CT Energy Facility, t~~The Decommissioning~~Termination~~ Fund Amount shall be \$4.3856.85 million in 2007~~1997~~ dollars. ~~Amounts in the two funds may vary, but their combined value shall be \$6.85 million in 1997 dollars. [Amendment 4]~~

IV.O. Socio-Economic Impacts

1. The KCP shall use water from the City’s municipal water supply system to meet its service and potable water requirements, and may use water from Collins

Product's Well No. 6 to meet make-up water needs. (ASC, pages B-4 and U-4; Fig F-1; Fig B-1.) [Amendment 4]

IV.S. Water Rights

The conditions in section IV.S. relate to a new water permit which the City shall obtain from the Oregon Water Resources Department (Department) for operation of the Energy Facility. Pursuant to agreement with Collins Products as the holder of Certificate of Water Right No. 48602, the KCP may use water for general industrial use as authorized by Certificate of Water Right No. 48602 and ORS 540.520(9). [Amendment 4]

1. ~~The holder of the permit shall be the City of Klamath Falls.~~
2. ~~The source of the water shall be a well in the Klamath River basin.~~
3. ~~The purpose or use of the water shall be for municipal use.~~
4. ~~The maximum rate of use shall not exceed 1.34 cubic feet per second taken together with Collins certificate 48602.~~
5. ~~The period of use shall be year round.~~
6. ~~The date of priority for the permit is October 28, 1996.~~
7. ~~The point of diversion location is the NW 1/4 of the NE 1/4 of section 24 in Township 39S, Range 8E, W. M.; 700 feet south and 1970 feet west from the NE corner of section 24.~~
8. ~~The place of use is located as follows:
NE 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4; NE 1/4 SE 1/4; NW 1/4 SE 1/4;
SW 1/4 SE 1/4; SE 1/4 SE 1/4; SECTION 13 and NE 1/4 NE 1/4; NW 1/4 NE 1/4;
NE 1/4 NW 1/4; SECTION 24; TOWNSHIP 39 SOUTH, RANGE 8 EAST, W.M.
NE 1/4 SW 1/4; NW 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4; SECTION 18;
TOWNSHIP 39 SOUTH, RANGE 9 EAST, W.M.~~
9. ~~The amount of water used under this right, together with the amount secured under any other right existing for the same lands is limited to a total diversion of 52.22 cubic feet per second or a lesser amount if delineated in the City's Water Management and Conservation Plan.~~
10. ~~Measurement, recording and reporting conditions:~~
 - a. ~~Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Water Resources Department Director (Director), to measure the amount of water used under this permit. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used under this permit each month and shall submit a report which includes the recorded water use measurements to the Water Resources Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.~~

b. — The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

11. — Use of water under authority of this permit may be regulated by the Water Resources Department if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

12. — The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Water Resources Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water level declines will be compared. The water user shall in no instance allow excessive decline, as defined in the Oregon Water Resources Commission rules, to occur within the aquifer as a result of use under this permit.

13. — If at any time the well or its use acts as a conduit for groundwater contamination or allows loss of artesian pressure, the Water Resources Department may require that the land owner repair the well in accordance with the current well construction standards.

14. — Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test, performed within the last ten years, meeting the Water Resources Department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

15. — Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

16. — This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

17. — By law, the land use associated with this water use must be in compliance with statewide land use goals and any local acknowledged land use plan in effect on the date this Amended Site Certificate is executed.

18. — The use of water shall be limited when it interferes with any prior surface or ground water rights.

19. — Actual construction of the well shall begin within one year from date the Water Resources Department issues the permit. Unless the Water Resources Department grants an extension, construction of the means of conveyance to the Energy Facility Site shall be completed within five years of the date the Water Resources Department issues the permit. Unless the Water Resources

~~Department grants an extension, complete application of the water to the use shall be made within five years of the date the Water Resources Department issues the permit.~~

(e) *A list of the Council standards relevant to the proposed change.*

Response: This section demonstrates that approval of this request complies with all relevant standards contained in OAR chapter 345, division 22, specifically OAR 345-022-0050 Retirement and Financial Assurance and OAR 345-022-0110 Public Services. None of the standards in OAR 345, divisions 23 and 24 are applicable to this request.

OAR 345-022-0050 Retirement and Financial Assurance. OAR 345-022-0050 requires that the Council find that

- (1) *The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility; and*
- (2) *The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful non-hazardous condition.*

Based on Exhibit W of the Application for Site Certificate (“ASC”), the Council found that the permitted site could be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. The requested amendment does not seek to change the type of land to be restored or the facilities to be removed. It does not propose to operate in a different manner or use hazardous materials or generate hazardous waste not considered by the Council for the permitted project. Therefore, the Council may rely on its findings and determination of compliance with OAR 345-0022-0050(1) for retirement.

In the Site Certificate, the Council imposed Condition III.A.12.vii requiring Klamath Energy to deliver to the Council a letter of credit in the amount of \$8.6 million (2007 dollars) that replaces the Decommissioning Fund maintained by the certificate holder to satisfy Conditions IV.D.3, D.4, and D.5. Condition IV.D.3 required Klamath Energy to maintain a separate fund established to provide for termination or decommissioning. For the facility, the Decommissioning Fund Amount was required to be \$6.85 million (1997 dollars). Pursuant to the analysis contained in **Exhibit A**, attached hereto, Klamath Energy has determined that the retirement costs of the amended project will be less than the retirement costs of the project as currently authorized. In particular, based on current methods approved by the Department, Klamath Energy proposes to reduce the financial assurance requirement to \$4.385 million (2007 dollars).

OAR 345-022-0110 Public Services. OAR 345-022-0110 requires that the Council find that

(1) *Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.*

Exhibit U of the ASC describes the potential impacts to public services within the analysis area. This request does not propose any change that would increase the number of employees, the quantity or method of disposal of solid waste, wastewater, or stormwater. No change to traffic levels will result from this request, and no new methods of traffic control or emergency response are proposed. The only change even indirectly pertaining to public utilities is a change to eliminate the requirement that the facility use water pursuant to a water right permit held by the City of Klamath Falls and to instead allow the use of water pursuant to an existing water right certificate. Klamath Energy does not seek to change the source from which water is withdrawn or the amount of water authorized for use at the facility in order to meet the facility's service and potable water requirements as set forth in Section IV.O.1. The diversion of water will be at the same point of appropriation with the same diversion and delivery facilities. With the elimination of the requirement for the City of Klamath Falls to maintain an unnecessary water right permit, there will be no impact on public utilities.

(f) *An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is "applicable" if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(10).*

Response: Section (e) above demonstrates that the proposed change would comply with all applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the Site Certificate as requested.

(g) *If the amendment would change the site boundary, extend the deadlines for beginning or completing construction or change the legal description of the facility, an updated list of owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).*

Response: The proposed amendment does not change the site boundary, extend the deadlines for beginning or completing construction, or change the legal description of the facility. Therefore, an updated list of property owners is not required.

SECTION 2 INFORMATION REQUIRED UNDER OAR 345-027-0060(2)

(2) *In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1). The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department's administrative record on the facility.*

Response: Other than the information set forth in Section 1 of this amendment request above, the information contained in the Application for Site Certificate, dated February 12, 1996, the information forming the basis for the Final Order and original Site Certificate, both dated August 1997, as supplemented by information forming the basis of the Final Orders and the First, Second, and Third Amended Site Certificates, all remain relevant. Klamath Energy hereby incorporates by reference relevant information previously submitted to the Department and otherwise included in the Department's administrative record for the facility.

SECTION 3 INFORMATION REQUIRED UNDER OAR 345-027-0060(3)

(3) *Before submitting a request to amend a site certificate, the certificate holder may prepare a draft request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare a draft request and confer with the Department, the Council recommends that the certificate holder follow this procedure.*

Response: Klamath Energy has conferred with the Department prior to submitting this amendment request.

SECTION 4 INFORMATION REQUIRED UNDER OAR 345-0027-0060(4)

(4) *The certificate holder shall submit an original and ten copies of the amendment request to the Department. In addition to the printed copies, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requested by the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Department.*

Response: Klamath Energy will submit this amendment request in an electronic format acceptable to the Department.

In sum, this amendment request demonstrates that the proposed changes to the financial assurance and the water rights pursuant to which water may be used at the facility will be accomplished in compliance with the applicable standards and will not violate any other Council standards or Site Certificate conditions. Klamath Energy therefore requests that the Council approve this request and make the requested amendment to the Site Certificate for the facility.