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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 98-1  
of  
WASHINGTON PUBLIC POWER  
SUPPLY SYSTEM  
For Amendment of Site Certification  
Agreement for Satsop Power Plant Site

COUNCIL ORDER NO. 731  
  
ORDER RECOMMENDING GOVERNOR'S  
APPROVAL OF AMENDMENT OF SITE  
CERTIFICATION AGREEMENT FOR  
SATSOP POWER PLANT SITE

**Nature of the Action.** This matter involves a request to the Washington State Energy Facility Site Evaluation Council (EFSEC or the Council) to amend the existing Site Certification Agreement (SCA) for the Satsop Power Plant Site. The existing SCA authorizes construction and operation of two nuclear power plants (WNP-3 and WNP-5) and a combustion turbine (Satsop Combustion Turbine Project). The purpose of the requested amendment is to remove the authorization for the two nuclear power plants from the agreement. The remaining agreement would continue to authorize the operation and construction of the combustion turbine project with an associated natural gas pipeline.

**Procedural Setting.** On June 25, 1998, the Washington Public Power Supply System (Supply System) filed a request with the Council to amend its SCA for the Satsop Power Plant site. Consistent with WAC 463-36-030 and pursuant to due and proper notice, the Council held a public hearing in Montesano, Washington, on October 28, 1998, to receive comments on the proposed amendment. The Council also received written comments on the proposed amendment through November 30, 1998.

While this application was pending, the Supply System has engaged in negotiations with the Satsop Redevelopment Project (SRP), an interlocal group composed of Grays Harbor County, the Port of Grays Harbor, and the Grays Harbor Public Utility District (PUD). The SRP has also been in negotiation with the Washington Department of Fish and Wildlife (WDFW). Certain agreements executed between these parties have provided the Council with information relevant to its decision here.

The Council has reviewed the request for amendment under the procedures outlined in chapter 463-36 WAC and hereby submits this recommendation to the Governor of the State of Washington for final action.

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## FINDINGS OF FACT

These findings do not attempt to provide a chronology of events on the Satsop site since 1976. Rather, they highlight and document certain assurances that EFSEC believes are necessary prior to completion of this amendment.

1. WNP-3 and WNP-5 are unfinished nuclear facilities. They are located on private (not federal) land near Elma, Washington. The Board of Directors of the Supply System formally terminated WNP-5 in January 1982 and WNP-3 in May 1994. Nuclear fuel was not brought onto the sites, and the plants were never completed or operated.

### *Transfer of Site*

2. On February 26, 1999, the Satsop Site Transfer Agreement (Transfer Agreement) between the Washington Public Power Supply System (Supply System) and the Satsop Redevelopment Project (SRP) became effective. The agreement contains the terms and conditions for the transfer of the ownership of, management of, and responsibility for the Satsop Site from the Supply System to the SRP. Satsop Site Transfer Agreement, February 26, 1999, p. 1.

### *State Interest in Economic Development*

3. Washington has recognized the statewide importance of economic development, particularly in communities where changed circumstances have required retraining to create a healthy economy. Governor Locke has praised the Grays Harbor community for its commitment to this goal. Remarks at the Dedication of the Satsop Development Park, November 17, 1998.
4. Grays Harbor County is designated as economically distressed with a three-year unemployment average of at least 20 percent above the state average and has been affected by downturns in the state's commercial salmon and timber harvests. Community Economic Revitalization Board Community, Department of Community, Trade, and Economic Development, November 20, 1998.

### *Feasibility of Economic Development at Satsop Site*

5. In 1996, the Satsop Redevelopment Project (with supporting funding from the Supply System and Bonneville Power Administration) retained consultant NBBJ to study the feasibility of redevelopment at the Satsop Site, including the potential for a successful business/industrial park and the potential for reuse of the existing infrastructure and facilities on the property.
6. NBBJ concluded that the Satsop site offers competitive advantages for certain business/industrial developments, which would be in keeping with the SRP's goal of economic stimulus. Five of the WNP-3/5 buildings have remaining economic life; the reuse potential for the infrastructure is mixed; and the existing roads can accommodate increased traffic associated with site redevelopment. NBBJ, Phase 2 Final Report, June 1997, p. 3.

1 *Intent for Economic Development*

- 2 7. The principal purpose of the SRP is economic development on the Satsop site. Satsop  
3 Site Transfer Agreement, February 26, 1999, p. 3.
- 4 8. The Supply System and SRP agree that the property transferred pursuant to the Transfer  
5 Agreement is intended to be used for the purposes of economic development in Grays  
6 Harbor County. Satsop Site Transfer Agreement, February 26, 1999, Exhibit A, p. A-1.  
7 The Council understands this statement to mean that *only the developed portion* of the  
property is intended for economic development purposes. The undeveloped acres of the  
Satsop Site will be protected, managed, and in some cases enhanced for the benefit of  
wildlife including habitat.

8 *Avoidance of Costs*

- 9 9. NBBJ estimated that complete site restoration, including demolition to grade, would cost  
approximately \$40 million. NBBJ, Phase 1 Report, February 1997, p. 13.

10 *Transfer to Political Subdivision(s) of the State*

- 11 10. The Satsop Redevelopment Project (SRP) is a local public agency, formed in April 1996  
12 by interlocal agreement pursuant to chapter 39.34 RCW among Grays Harbor County, the  
13 Port of Grays Harbor, and the Public Utility District No. 1 of Grays Harbor County. The  
SRP and each of these entities separately are political subdivisions of the state, composed  
of elected officials and located in the same county as the Satsop Site.
- 14 11. Under the Transfer Agreement, the SRP may assign the agreement to a public corporation  
15 formed pursuant to County ordinance for the purpose of taking possession of and  
16 managing the Satsop Site. The Supply System and SRP have agreed that any assignment  
shall assign the agreement in its entirety with no changes or amendments unless agreed  
otherwise in writing. Satsop Site Transfer Agreement, February 26, 1999, p. 12.

17 *Transfer of Title*

- 18 12. In the Transfer Agreement, the Supply System undertakes to deliver an executed warranty  
19 deed conveying fee simple title to the Satsop Site into escrow as soon as possible after  
20 February 26, 1999. At closing, the escrow agent shall deliver the duly executed and  
21 acknowledged warranty deed to the SRP. The legal description of the site is contained in  
the agreement. Satsop Site Transfer Agreement, February 26, 1999, Exhibit A, pp A-4,  
A-6; Exhibit A-1 to Exhibit A.

22 *Site Restoration*

- 23 13. The principal purpose of the restoration work is to put the real property and certain  
24 buildings and structures into agreed condition for use by the SRP. Restoration work shall  
25 be accomplished through one or more "Demolition and Restoration Contracts" awarded  
26 by Supply System and subsequently assigned to the SRP to manage. The SRP will have  
the opportunity to participate in developing the specifications for the contracts. Satsop  
Site Transfer Agreement, February 26, 1999, pp. 3-4, and Exhibit A-6 to Exhibit A, p. A-  
6-1.

- 1 14. The Supply System and SRP's mutual understanding of the scope of Demolition and  
2 Restoration work is reflected in a letter from Burns & McDonnell Engineers to the Supply  
3 System dated November 3, 1998. Satsop Site Transfer Agreement, February 26, 1999,  
4 Exhibit A-6 to Exhibit A, p. A-6-6.
- 5 15. The Supply System briefed members of the Council in February 1998 and February 1999  
6 on restoration plans mutually agreed with the SRP. On October 28, 1998, some Council  
7 members toured the site to evaluate the effectiveness of the restoration plan.

8 *Public Health and Safety, Security on the Site*

- 9 16. The restoration work will provide for certain protections of the public health and safety.  
10 Satsop Site Transfer Agreement, February 26, 1999, pp. 3-4.
- 11 17. From February 26, 1999 until completion of the Supply System's obligations for site  
12 demolition and restoration and any asset disposition, the Supply System and SRP will  
13 jointly occupy the site. Exhibit C of the Transfer Agreement prescribes the arrangements  
14 for joint occupation and use of the site, including the transition of custody and control.
- 15 18. The SRP will assume the responsibility for site security sixty days after receipt of the  
16 closing amount in the Transfer Agreement. The Agreement defines "site security" to  
17 include a secure perimeter fence around the site, on-site guards, security systems, and  
18 other measures that are reasonably necessary. Satsop Transfer Agreement, February 26,  
19 1999, Exhibit, p. C-1.
- 20 19. The Supply System will be responsible for additional security measures that may be  
21 necessary or advisable during Demolition and Restoration. The Supply System shall erect  
22 a security fence suitable to prevent entry around the boundary of the Power Block. This  
23 fencing isolates the health and safety concerns unique to the site. Initially, the fence line  
24 shall include both cooling towers in the Power Block. After completion of restoration  
25 work on each cooling tower, the fence line shall be moved to exclude that tower from the  
26 Power Block secured area. Satsop Site Transfer Agreement, February 26, 1999, Exhibit  
C, p. C-4.

*Responsibility and Liability for Public Health and Safety*

- 20 20. The SRP has agreed to assume responsibility for complying with local regulations that  
21 protect the public welfare, including, but not limited to, general and environmental health  
22 and safety, at the site. Satsop Site Transfer Agreement, February 26, 1999, p. 7
- 23 21. During the period of joint occupation and use beginning February 26, the Supply System  
24 and SRP will each bear responsibility for its own intentional or negligent acts or  
25 omissions that result in property damage, personal injury or death, and shall defend,  
26 indemnify and hold harmless the other party therefore during that time. Satsop Site  
Transfer Agreement, February 26, 1999, Exhibit C, pp. C-5.

*Public Welfare; Wildlife Mitigation Agreements*

- 22 22. "Public welfare," as used in RCW 80.50.300(2), means "health, safety and the  
23 environment, including any existing fish and wildlife agreements and successor  
24 agreements." Journal of the House, Fifty-Second Day, February 28, 1996, p. 2068.

- 1 23. In November 1998, the SRP and the Washington Department of Fish and Wildlife  
2 (WDFW) executed their Satsop Power Plant Site Wildlife Mitigation Lands Management  
3 Agreement (new Mitigation Agreement). The agreement is binding on the SRP, the  
4 individual signatories, and the WDFW.
- 4 24. Under the agreement, upon transfer of the Satsop Site from the Supply System to the SRP,  
5 the “Supply System’s duties and responsibilities for the protection of wildlife, including  
6 habitat, shall be transferred to the SRP.”<sup>1</sup> The SRP will fund up to three weeks of WDFW  
7 staff time for monitoring and coordination. The commitments contained in the  
8 incorporated documents will remain in force unless and until modified, per the terms of  
9 the new agreement.
- 7 25. The new Mitigation Agreement shall be binding on all successors or assignees. Control of  
8 the lands designated for wildlife mitigation may be transferred to a third party upon  
9 written concurrence of the SRP and WDFW. Thus, the Council understands that, if the  
10 site is transferred to a public corporation, WDFW may either agree to have the public  
11 corporation assume these responsibilities or continue to hold the individual signatories of  
12 the new Mitigation Agreement jointly and severally liable. Satsop Power Plant Site  
13 Wildlife Mitigation Lands Management Agreement, November 1998, p. 3.
- 11 26. The Supply System’s “duties and responsibilities” under the 1994 agreement included (i)  
12 acceptance of the 1994 Habitat Evaluation Procedure (HEP) Impact Assessment as a  
13 standard, (ii) fulfillment of the obligations in the Satsop Wildlife Mitigation Plan,  
14 Revision 1, and (iii) agreement to the terms in the Wildlife Mitigation Plan Standard  
15 Operating Procedures. Agreement on Management for Wildlife Mitigation between the  
16 State of Washington Department of Fish and Wildlife and the Washington Public Power  
17 Supply System, 1994.
- 15 27. In Resolution 275, EFSEC approved the 1994 Agreement on Management for Wildlife  
16 Mitigation. Council Resolution No. 275, November 14, 1994.
- 17 28. The Transfer Agreement acknowledges the new Wildlife Mitigation Agreement.

18 *Retention of SCA for Satsop Combustion Turbine Project*

- 19 29. The proposed revision to the SCA deletes the terms relevant to the nuclear projects and  
20 retains the terms relevant to the combustion turbine project. The amended SCA will  
21 continue to certify the construction and operation of the Satsop Combustion Turbine  
22 project.

22 **CONCLUSIONS OF LAW**

- 23 1. The proposed amendment to the SCA is consistent with applicable laws and rules. WAC  
24 463-36-040(2).

25 \_\_\_\_\_  
26 <sup>1</sup> The Supply System’s duties and responsibilities are contained in a 1994 agreement between the Supply System  
and WDFW entitled “Agreement on Management for Wildlife Mitigation Between the State of Washington  
Department of Fish and Wildlife and the Washington Public Power Supply System.”

1 2. The proposed amendment to the SCA is consistent with the public health, safety, and  
2 welfare. WAC 463-36-040(3) and WAC 463-36-050.

3 3. The proposed amendment to the SCA is consistent with the original Site Certification  
4 Agreement (SCA). WAC 463-36-040(1).

5 **Discussion:**

6 Notwithstanding the close interrelationships between the Supply System's amendment request  
7 and the Supply System and SRP's ultimate plans for the site, the Council's action here is strictly  
8 termination of a "license."<sup>2</sup> It is *not* state authorization to engage in any particular activity on  
any portion of the site. Any future plans for the site are subject to all applicable state and local  
laws, including the State Environmental Policy Act.

9 Chapter 463-36 WAC governs the Council's procedure for amending or terminating a Site  
10 Certification Agreement. WAC 463-36-040 outlines the relevant considerations prior to a  
decision to amend or terminate. Specifically,

11 ...[i]n reviewing any proposed amendment, the council shall consider whether the  
proposal is consistent with:

- 12 (1) [t]he intention of the original SCA;
- 13 (2) [a]pplicable laws and rules; and
- 14 (3) [t]he public health, safety, and welfare.

15 WAC 463-36-050 explains that the council's consideration of public health, safety, and welfare  
16 includes environmental concerns, as follows:

17 [i]n reviewing whether a proposed amendment is consistent with the public health, safety,  
18 and welfare, the council shall consider the short-term and long-term environmental  
impacts of the proposal.

19 As indicated in the Conclusions of Law, the Council has considered all relevant factors, and  
20 concluded that the proposed amendment is consistent with these factors. Each of the Council's  
21 conclusions is discussed below.

22 **A. Consistency with applicable laws and rules.**

23 The Council's action must consider all applicable (and potentially applicable) laws and rules,  
24 including but not limited to RCW 80.50.010, chapter 43.21C RCW (the State Environmental  
Policy Act or SEPA), the Council's rules for site restoration in WAC 463-54-080 and WAC 463-  
25 42-655-680, and potentially RCW 80.50.300.<sup>3</sup>

26 <sup>2</sup> The proposed revision to the SCA deletes the terms relevant to the nuclear projects and retains the terms relevant  
to the combustion turbine project. The amended SCA will continue to certify the construction and operation of the  
Satsop Combustion Turbine project.

<sup>3</sup> The Council notes that RCW 80.50.300(1) and RCW 80.50.300(2) each apply to slightly different circumstances.

RCW 80.50.300(1) is not conditioned on the transfer of title to the site, and allows the transfer of site restoration  
responsibilities with or without the transfer of title.

1           1.       Consistency with RCW 80.50.010 (Legislative Intent).

2       The Legislature’s intent in creating EFSEC, as expressed in RCW 80.50.010, was to create a  
3       process to balance the need of state citizens for energy and the state’s interest in protecting the  
4       quality of its environment. When the Legislature amended this section in 1996, it acknowledged  
5       these interests may include the efficient reuse of resources. Specifically, RCW 80.50.010(4)  
6       indicates that the state (through EFSEC’s actions) will strive  
7       [t]o avoid costs of complete site restoration and demolition of improvements and  
8       infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy  
9       facilities for public uses, including economic development, under the regulatory and  
10       management control of local governments and port districts.

11       The proposed amendment to the SCA is consistent with the Legislature’s intent, as expressed in  
12       RCW 80.50.010, because it allows for the efficient reuse of resources. Termination of the SCA  
13       will terminate EFSEC’s regulatory authority on the WNP-3/5 site and allow the Supply System  
14       and SRP to proceed with their plans for the site, subject to applicable state and local law.

15       The Supply System and the Satsop Redevelopment Project have presented a plan that will allow  
16       the SRP to pursue economic development, reusing structures and infrastructure on the site for  
17       commercial and light industrial purposes, rather than demolishing them. Through the intended  
18       transfer of the site (outside the scope of this amendment process), such redevelopment will be  
19       under the full management and regulatory control of local government, including Grays Harbor  
20       County, the public utility district, and the Port of Grays Harbor.

21           2.       Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

22       In general, SEPA requires an agency to prepare an Environmental Impact Statement (EIS) before  
23       taking any major action significantly affecting the quality of the environment. See RCW  
24       43.21C.030(c). The SEPA rules require

25       [a] supplemental EIS (SEIS) shall be prepared ... if: (a) there are substantial changes to a  
26       proposal so that the proposal is likely to have significant adverse environmental impacts;  
27       or (b) there is significant new information indicating ... probable significant adverse  
28       environmental impacts. WAC 197-11-405(4).

29       EFSEC’s responsible SEPA official determined that an SEIS is not required for this amendment  
30       of the SCA. The Council endorsed this conclusion. SEPA requires an agency to “prepare an  
31       SEIS if substantial changes in the proposal or new information indicate probable significant  
32       adverse environmental impacts *not adequately covered by the range of alternatives and impacts*  
33       *analyzed in the FEIS.”* (emphasis added) The Washington State Environmental Policy Act, A  
34       Legal and Policy Analysis, Issue 10, Richard L. Settle, 1998, p. 205. Amendment of the SCA to  
35       withdraw the right to complete construction and to operate the nuclear facility would have no  
36       significant environmental effect that had not already been studied. The original Environmental

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37       RCW 80.50.300(2) is conditioned on the transfer of title, and requires the Council to release the site at the point a  
38       deed is delivered. In this case, RCW 80.50.300(2) may or may not apply, depending on whether title is transferred  
39       before or after the Council’s amendment.

40       Irrespective of the applicability of either of these sections, the Council’s amendment process requires a full review  
41       under chapter 463-30 WAC.

1 Impact Statement, the 1994 HEP analysis (performed in conjunction with the 1994 Agreement  
2 on Management for Wildlife Mitigation), the environmental analysis presented in the  
3 adjudications of both the nuclear and CT projects, and the Council's review of the Supply  
4 System's Site Restoration Plan in 1995 (prior to the adoption of Resolution 280) all have  
5 provided thorough information about environmental impacts at the site.

6 As the local entities proceed with economic development plans for the developed portion of the  
7 site, additional environmental review, up to and including SEPA study, will likely be required.

8 3. Consistency with the Council's rules for site restoration.

9 The Council's statute sets no general provisions for site restoration. The Council's rules on site  
10 restoration indicate that

11 [i]n the absence of a council determination as to the level of site restoration, restoration of  
12 the site to a reasonable approximation of its original condition prior to construction  
13 should be required. WAC 463-42-680.

14 Although the Council's rules establish a default, the rules acknowledge that the Council has  
15 discretion not to require "greenfield restoration." In this case, the Council's "determination as to  
16 the level of site restoration" will be guided by RCW 80.50.010(4), which encourages the Council  
17 to allow economic restoration in lieu of greenfield restoration. Thus, the proposed amendment to  
18 the SCA is consistent with the Council's rules.

19 4. Applicability of RCW 80.50.300.

20 RCW 80.50.300 contains provisions for release of EFSEC's jurisdiction upon transfer of a site to  
21 "any political subdivision or subdivisions of the state composed of elected officials." Because a  
22 transfer has not occurred, and because the ultimate transfer will not necessarily be made to a  
23 political subdivision composed of elected officials, the Council finds that this section is not  
24 directly applicable. However, the Council is guided by the expression of public policy contained  
25 therein.

26 In conclusion, the Council's rules require it to consider whether the proposed amendment is  
consistent with applicable laws and rules. As demonstrated, the Council has considered whether  
the proposed amendment is consistent with RCW 80.50.010, SEPA, the Council's rules  
regarding site restoration, and expressions of public policy in RCW 80.50.300. The Council  
concludes that the proposed amendment is consistent with each.

**B. Consistency with public health, safety, and welfare.**

The Council must consider whether the proposed amendment protects public health and safety,  
protects environmental aspects of the public welfare, and is consistent with the public welfare in  
other regards.

1. Protection of health and safety.

The proposed amendment itself simply withdraws EFSEC's right and responsibility to regulate  
public health and safety on the site. The amendment in no way alters the condition of the site  
vis-à-vis public safety. EFSEC has required full assurance that public health and safety will be  
fully protected at all times as a necessary condition to releasing its regulatory authority.

1 During the past months, EFSEC has maintained close communication with the Supply System  
2 and the SRP, regarding their plans to secure the site as the structures are gradually reconfigured  
3 for future industrial purposes. The Supply System and SRP have briefed the Council and its  
4 Executive Committee, and Council members toured the site in October 1998. See Finding of  
5 Fact No. 15.

6 The Transfer Agreement memorializes these plans. Through the agreement, the SRP  
7 acknowledges and accepts responsibility for complying with local regulations that protect the  
8 public welfare, including, but not limited to, general and environmental health and safety, at the  
9 site. See Finding of Fact No. 20. Through a series of transitional steps, the site will be secured  
10 and restored, ultimately leading to the SRP's full custody and control of the site. The Transfer  
11 Agreement delineates clear responsibilities for securing the site and clear liabilities for the public  
12 health, safety and welfare during the transition. See Findings of Fact Nos. 17-21.

13 Consistent with the assurances contained in the agreement, EFSEC is satisfied that amendment  
14 of the SCA, releasing its oversight, is consistent with public health and safety.

15 2. Protection of the public welfare.

16 a. Environmental issues.

17 WAC 463-36-050 requires the Council to consider the short-term and long-term environmental  
18 impacts of a proposed amendment. The Council notes that this requirement may be more  
19 applicable to an amendment other than termination in which the certificate holder has requested a  
20 specific change in its activities on the site and the Council is able to evaluate the environmental  
21 impacts of the proposed change. In the case of termination, the certificate holder does not  
22 request a specific change; future activities on the site remain speculative and the environmental  
23 impacts are difficult to evaluate. Nonetheless, the Council has considered the environmental  
24 impacts on both the developed site (approximately 400 acres) and the undeveloped site  
25 (approximately 1200 acres).

26 (1) *Developed portion.*

Consistent with the terms of the transfer agreement, the Council understands that the SRP  
intends to use the currently developed portions of the site for light industry and commercial  
purposes. This will likely involve reconfiguring structures in the power block, building new  
structures, expanding the existing infra structure, and attracting tenants. The Council notes that  
the SRP, as the governmental entity responsible for future action on the site, is subject to SEPA  
and all other legally required processes. Thus, the Council is satisfied that all potential adverse  
environmental impacts arising from future activities on this portion of the site will be adequately  
addressed by the appropriate parties with appropriate opportunity for public involvement.

(2) *Undeveloped portion.*

Amendment of the SCA (termination of the WNP-3/5 portion) includes termination of the  
Supply System's obligation to the state to act within the constraints and conditions of the SCA,  
as enforced by EFSEC. One of the major "environmental conditions" undertaken by the Supply  
System in the SCA was compliance with a stipulated wildlife mitigation plan (1994 Agreement  
on Management for Wildlife Mitigation incorporated by reference into the EFSEC SCA). Under

1 the original mitigation plan, the Supply System was bound to preserve and manage  
2 approximately 1200 acres of forest habitat in its natural condition throughout the life of the SCA.

3 The Council has interpreted the agreement to continue through the year 2040 at a minimum.  
4 Even though the wildlife mitigation plan was to continue through the year 2040, upon  
5 amendment of the SCA (termination of the WNP-3/5 portions), EFSEC no longer has authority  
6 to enforce its terms.

7 Concerned about potential loss of protection for this significant habitat, the Council encouraged  
8 the SRP, as future owner of the site, and the Washington Department of Fish and Wildlife  
9 (WDFW) to enter an enforceable agreement to perpetuate the terms of the mitigation plan. In  
10 November 1998, these parties executed their Satsop Power Plant Site Wildlife Mitigation Lands  
11 Management Agreement, which adopts the terms of the existing wildlife mitigation plan. Under  
12 this agreement, the commitments outlined in the 1994 documents<sup>4</sup> remain in force unless and  
13 until modified in writing by mutual agreement of the SRP and WDFW. The Council believes  
14 that WDFW will actively monitor the site and enforce the terms of the new agreement in the  
15 pursuit of its statutory mandate on behalf of the citizens of the state.

16 The new Mitigation Agreement between the SRP and WDFW is not effective until actual  
17 transfer of title to the SRP. However, between the effective date of the SCA amendment (and  
18 concomitant termination of the Council's jurisdiction over the mitigation lands), the original  
19 mitigation agreement between the Supply System and WDFW continues in effect and assures the  
20 protection of the mitigation lands until the new Mitigation Agreement becomes effective.

21 *Public comments.* The majority of public comments received on the application for amendment  
22 related to the issue of wildlife mitigation; these comments are addressed in this section of the  
23 Council's order. The Council received comments from the Grays Harbor Audubon Society  
24 (Audubon), the WDFW, the Grays Harbor Public Development Authority (GHPDA), and  
25 Columbia-Pacific Resource Conservation and Development (RCD). These comments  
26 encompass all the major concerns submitted to the Council.

27 i. Mitigation in perpetuity.

28 *Audubon position.* Audubon argues that (i) mitigation for the effects of the construction of the  
29 nuclear plants should continue into perpetuity, and (ii) EFSEC has the responsibility and  
30 authority to require as much.

31 First, Audubon states, the original Mitigation Agreement was compensation to the people of  
32 Washington for the adverse environmental impacts of construction of the nuclear project.  
33 Redevelopment as an industrial park perpetuates these impacts. As long as adverse impacts  
34 exist, the people of the state must be compensated by the preservation of the mitigation lands.  
35 Only after greenfield restoration do the effects of construction terminate.

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36 <sup>4</sup> The 1998 Agreement states, "SRP...shall be bound by the Supply System's duties and obligations contained in the following documents, hereinafter referred to as the Wildlife Mitigation Documents: [i] ...Satsop Power Plant Site Wildlife Mitigation Plan, Revision 1, ...includ[ing] the Agreement on Peripheral Properties; [ii] Satsop Power Plant Habitat Evaluation Procedure Impact Assessment, dated June 28, 1994; and [iii] Satsop Power Plant, Wildlife Mitigation Plan, Standard Operating Procedures. Each of [these] documents is incorporated by reference..."

1 Second, Audubon asserts, EFSEC has the authority to ensure that mitigation will continue into  
2 perpetuity. It has the authority to require a conservation easement, to impose conditions that “go  
with the land,” or to perpetuate mitigation in some other fashion.<sup>5</sup>

3 GHPDA position. The Grays Harbor Public Development Authority (GHPDA) responds that  
4 locking the site into preservation status for perpetuity is not reasonable. The site may be fully  
restored at some point, such that mitigation is no longer required.

5 Discussion. In general, EFSEC does not interpret its authority as broadly as Audubon proposes.  
6 During the life of an SCA, EFSEC has the authority to set terms and conditions for the  
construction and operation of a project and to enforce those terms and conditions. This includes  
7 terms to mitigate adverse environmental effects. The terms are regulatory in nature. At  
8 termination of an SCA, EFSEC has the authority to determine an appropriate level of site  
restoration (unless constrained by other provisions of law) and to predicate termination upon  
9 successful completion of these requirements. It does not have the authority to set regulatory  
conditions for mitigation into the future. It does not have the authority to require property  
10 transactions. After termination of an SCA, EFSEC has no further regulatory authority. Thus, the  
only matter that the Council is asked and able to rule on at this time is whether to amend the Site  
Certification Agreement.

11 In this case, EFSEC’s authority to determine the level of site restoration guided in significant  
12 part by statutory expressions of public policy regarding the use of unfinished nuclear sites. If  
and when an actual transfer is effectuated as described in RCW 80.50.300, authority for public  
13 welfare, including environmental mitigation, would be transferred to the SRP and its successors.  
At that point, EFSEC would have no authority to set terms for mitigation that will require future  
14 regulatory oversight. Moreover, EFSEC has no authority to require the grant of a conservation  
easement, which is the grant of an interest in property.

15 ii. Ambiguity in new Mitigation Agreement.

16 Audubon position. Audubon argues that the terms of the new Mitigation Agreement are  
ambiguous and suggests that EFSEC should require clarification of the terms prior to amending  
17 the SCA. Among the ambiguities are (i) the degree of forest management contemplated by the  
agreement and (ii) the termination date of the new Agreement. Audubon implies that EFSEC  
18 may be able to negotiate changes in either the Mitigation Agreement or the Transfer Agreement  
to clarify these issues.

19 Discussion. Whether or not the mitigation agreement is ambiguous, EFSEC is not in a position  
20 to alter or override its terms. Both the Mitigation and Transfer Agreements have been executed.  
Prior to their execution, EFSEC consistently supported a strong, enforceable agreement to  
21 supercede the old Mitigation Agreement. This was accomplished in the new Mitigation  
Agreement, after negotiation by knowledgeable people representing multiple interests. EFSEC  
22 has no role in these contractual relationships and no role in clarifying the terms of contracts to  
which it is not a party. Nevertheless, the Council is satisfied that the new Mitigation Agreement  
23 continues substantial protections and that changes require mutual agreement by the appropriate  
representatives of the affected interests.  
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26 <sup>5</sup> Audubon has cited no legal authority for this proposition nor suggested mechanisms other than conservation  
easements to accomplish this goal.

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iii. Compliance with new Mitigation Agreement.

*Audubon position.* Audubon argues that (i) the SRP's plans are inconsistent with the Mitigation Agreement and (ii) the SRP's recent actions belie its commitment to the agreement.

Among the plans that are inconsistent, Audubon cites the Columbia Resource and Conservation District's (RCD's) plans for a managed forest (with limited timber harvest) and the GHPDA's plans for recreational uses of the site. According to Audubon, these plans are intrusive and change the character of the preserved lands.

Further, Audubon argues, the GHPDA may not have the commitment or the resources to perform its responsibilities under the agreement. Recent actions including the county's rezone of portions of the site and its retention of the Columbia RCD to study managed forestry indicate that it is exploring avenues for eventual use of the site. Moreover, operating with a minimal budget within an economically depressed area, the GHPDA is unlikely to place a priority on allocating adequate funds for the management of the mitigation lands.

*GHPDA and RCD position.* The GHPDA and Columbia-Pacific RCD respond that they acknowledge the Mitigation Agreement and are bound by its terms. Under the agreement, the primary objective of forest habitat management is to provide conditions suitable for viable populations of wildlife species dependent upon forest habitats. This objective is to be met by preserving and planning for the future development of mature forests. The RCD is investigating a plan to implement a landscape management system that will allow the desired "mature forest" structure to be reached faster and more reliably than by natural aging. The plan will allow for adaptive management. The WDFW has been and will continue to be involved in the formulation of the plan.

GHPDA acknowledges that it is open to the possibility of limited recreational use of the site. All decisions regarding public access to and recreational use of the site will be made with the broad public interest in mind, consistent with the terms of the mitigation agreement.

*Discussion.* EFSEC notes that the SRP, the GHPDA, and the WDFW have all acknowledged the existence of the Wildlife Mitigation Agreement as a binding agreement. The SRP and WDFW each has a statutory commitment to the public. Under the agreement, WDFW's monitoring responsibilities will be funded by the SRP on a cost reimbursable basis. Based on the commitments of these public entities and the enforceability of the agreement, EFSEC believes that the terms of the agreement ensure compliance.

iv. Enforcement of Mitigation Agreement.

*Audubon position.* Audubon argues that the WDFW is not politically in a position to enforce the Mitigation Agreement. If WDFW took a violation of the agreement to court, it would suffer negative political repercussions. Consequently, WDFW is unlikely to enforce the agreement vigorously.

*Discussion.* The Council notes that WDFW has voluntarily entered the new Wildlife Mitigation agreement. The agreement is binding on the SRP, its individual members, and the WDFW and provides for compensation to WDFW not only for regular monitoring activities, but for costs and attorneys' fees that may be incurred during enforcement. EFSEC must assume that WDFW, in entering and enforcing the agreement, has taken and will continue to take the steps it deems necessary to fulfill its statutory obligations to the public, at least to the extent that EFSEC would have done so under the SCA and, conceivably, more effectively and vigorously.

1 In conclusion, the Council has considered both the short- and long-term environmental effects of  
2 the proposed amendment on the developed and undeveloped portions of the site. The Council is  
3 confident that (i) future activity on the developed portion will be governed by SEPA with active  
4 public involvement<sup>6</sup> and (ii) future activity on the undeveloped site will conform to the terms of  
5 the new mitigation plan, as actively enforced by WDFW.

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7 b. Economic issues.

8 The proposed amendment also supports those aspects of the public welfare envisioned by the  
9 Legislature when it amended the Council's statute in 1996. RCW 80.50.010(4) clearly expresses  
10 statewide policy that reuse of an unfinished nuclear site for economic development, managed and  
11 directed by a political subdivision, is consistent with the public welfare.<sup>7</sup> Termination of the  
12 SCA without greenfield restoration opens the door for economic development, an acknowledged  
13 priority of the state in Grays Harbor County. Use of the existing facilities and infrastructure, in  
14 lieu of demolition, restoration, and development of alternate sites, is an efficient use of public  
15 financial and natural resources, benefiting not only the local community, but all ratepayers and  
16 citizens of the state. See Satsop Site Transfer Agreement, February 26, 1999, p. 3.

17 In conclusion, the Council's rules require it to consider whether the proposed amendment is  
18 consistent with the public health, safety, and welfare. After due consideration, the Council is  
19 confident that the public health, safety and welfare will be well maintained after the SCA is  
20 amended.

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22 **C. Consistency with the intention of the original SCA.**

23 The Council must consider whether the proposed amendment is consistent with the intention of  
24 the original SCA.

25 In general, the intention of every SCA is to grant state authorization to a certificate holder to  
26 construct and operate an energy project that has been determined to be in the state interest.  
Through the SCA, the state grants the certificate holder a "license"<sup>8</sup> for the project. In return,  
the certificate holder commits itself to comply with the terms of the SCA, including (i)  
conditions governing construction, (ii) conditions governing operation, (iii) conditions to  
mitigate for the environmental effects of construction and operation, and (iv) conditions EFSEC  
may subsequently impose for site restoration (after consideration of restoration plans submitted  
by the certificate holder). The certificate holder chooses whether to proceed to construction and  
may terminate the project at will, consistent with established requirements for restoration.

During the life of an SCA, EFSEC has the authority to enforce compliance with these conditions  
and the authority to set an appropriate level of restoration, required prior to termination.

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<sup>6</sup> Grays Harbor Audubon Society, as demonstrated by its involvement in this amendment process, has a strong concern for the future of the site.

<sup>7</sup> Although the site may be transferred to a public corporation, the corporation would be bound by the same terms as the SRP. See Finding of Fact No. 11.

<sup>8</sup> The "license" is called a site certification agreement.

1 Termination of an SCA concludes EFSEC’s involvement with the site and its ability to set and  
2 enforce ongoing mitigation.

3 Termination of the SCA for the WNP 3/5 nuclear projects is consistent with its original intent.  
4 The Supply System has chosen not to complete and operate the projects and accordingly has  
5 requested termination of its “license” to do so.

6 As certificate holder, the Supply System has complied with the conditions for construction,  
7 operation, and mitigation set forth in the original document. Among the requirements for  
8 mitigation was the stipulated wildlife mitigation plan, incorporated by reference into the SCA.  
9 By incorporation of this agreement into the SCA, the Council required and the Supply System  
10 agreed to mitigate the loss of habitat occasioned by the clearing of the nuclear site during the life  
11 of the project. Since the execution of the SCA in 1976, the Supply System has performed the  
12 required mitigation, preserving and managing the natural habitat.

13 As certificate holder, the Supply System has also complied with the intent of the SCA regarding  
14 site restoration. Consistent with the Council’s rules, the original SCA required the Supply  
15 System to update its plan for site restoration periodically (in a level of detail commensurate with  
16 the time until site restoration is to begin), but acknowledged the Council’s ultimate discretion to  
17 determine an appropriate level of restoration. Subsequent legislation has narrowed the range of  
18 the council’s discretion in the event of a transfer of the site to a political subdivision. Because  
19 the Governor and legislature have indicated that redevelopment of the area as a vital industrial  
20 park is in the *state interest* and stands in lieu of greenfield restoration, EFSEC does not believe it  
21 is appropriate to require further restoration prior to termination of the WNP 3/5 SCA.<sup>9</sup>

#### 22 **E. Conclusion.**

23 The Council has concluded that the proposed amendment to terminate the nuclear project is  
24 consistent with applicable law; the public health, safety, and welfare; and the intent of the  
25 original SCA. Certification for the Satsop Combustion Turbine project (CT project) continues  
26 unchanged, under the terms and conditions in effect prior to the amendment. Certification for  
the CT project was granted through the EFSEC siting process after a full review and adjudication  
in 1996.

When and if this amendment becomes effective and when local government assumes full  
responsibility for the public interest at the site, the broad interests of the state will have been well  
served.

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<sup>9</sup> The Council’s statute and rules provide no authority for EFSEC to establish and enforce mitigation measures past  
the termination of an SCA. Rather, EFSEC is expected to consider the state’s interest in the environment as it  
establishes appropriate requirements for restoration.

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**ORDER**

For the foregoing reasons, the Council adopts the proposed Amendment No. 3 of the Site Certification Agreement for the Satsop Power Plant Site and recommends its approval by the Governor. The Council directs that this Order shall be attached to the amended Site Certification Agreement and forwarded to the Governor of the State of Washington for his consideration and action.

DATED and effective at Olympia, Washington, this 20<sup>th</sup> day of April 1999.

/s/ Deborah Ross  
Deborah Ross, EFSEC Chair

**Notice:** This is a final order of the Council. Administrative relief may be available through a petition for reconsideration, filed with the Council Manager within ten days of the service of this order.