



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Northwest Regional Office
911 Northeast 11th Avenue
Portland, Oregon 97232

May 09, 2024

IN REPLY REFER TO:
NATURAL RESOURCES
NEWHALEM CREEK HYDROELECTRIC PROJECT
FERC No. 2705-037

Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE.
Washington, D.C. 20426

Re: COMMENTS – Environmental Assessment for Application to Surrender License
Newhalem Creek Hydroelectric Project (FERC No. 2705-037)

Dear Acting Secretary Reece:

Thank you for the opportunity to provide comments on the Environmental Assessment (EA) for the proposed decommissioning of the Newhalem Creek Hydroelectric Project (Project) (FERC No. 2705-037). The Project is owned and operated by Seattle City Light. The Bureau of Indian Affairs (BIA) works with affected Indian Tribes to implement the Secretary of the Interior's authorities under Part I of the Federal Power Act (FPA) (16 U.S.C. §§ 739a-825r). Actions under these authorities generally include participating in licensing proceedings and post-license implementation of non-federal hydroelectric projects affecting Indian reservations, Indian trust resources (e.g., land, fish, wildlife, and cultural resources), and/or other resources important to Indian tribes. BIA also assists in the development and implementation of studies to address potential effects on fish and wildlife, water supply, cultural resources, and tribal economies. Additionally, we work closely with other federal agencies to ensure that impacts to the lands and resources under their supervision are appropriately mitigated. We provide the following comments to minimize impacts of the proposed decommissioning on trust resources and ensure restoration of the site to its historical condition, in accordance with applicable National Park Service (NPS) guidelines.

The Project is located entirely on lands within the area relinquished, or “ceded,” to the United States by Tribes, specifically federal lands within the Ross Lake National Recreation Area, an NPS unit. The EA is correct in stating the Project area is ancestral to at least three Tribal organizations. Tribes that have expressed interest in the Project decommissioning include the Sauk-Suiattle Indian Tribe, the Swinomish Tribal Indian Community, and the Upper Skagit Indian Tribe. No Tribal reserved lands are located within the boundaries of the Project. However, all three of these Tribes are signatories or successors-in-interest to signatories of the 1855 Treaty of Point Elliott. The treaty established the Swinomish, Suquamish, Tulalip, and Lummi reservations. The treaty also guaranteed fishing, hunting, and gathering rights within the Tribes' “usual and accustomed” grounds and stations.

The Project is situated within the ethnographic territory of the Upper Skagit people as described in the EA. An Upper Skagit village was reported in the vicinity of the Project that consisted of several separate winter houses located on the Skagit River. This village would have been located at the intersection of two trails: one along the Skagit River that led downstream people to and from the Skagit River valley, and one used by groups traveling south from northern winter villages.

As evidenced by numerous comments filed by the Tribes on the record for this FERC proceeding, the original construction of the Project perpetuates a long-standing pattern of appropriating resources from the Skagit River Basin by Seattle City Light. The Tribes' comments further highlight the taking of these resources power Seattle City Light's economic development. For the tribal people occupying the Skagit River Basin, this economic development proved to be disastrous through the inundation of villages and food harvesting rights. It was never contemplated that the relinquishment of lands associated with the 1855 Treaty of Point Elliot would have resulted in the construction of significant industrial infrastructure such as the Project.

The EA describes the proposed action (Partial Removal) through which Seattle City Light proposes to decommission and remove some of the Project features, but retain certain features considered to be historically important. It also includes three alternatives: 1.) Full Removal; 2.) Proposed Action (Partial Removal) with Staff-recommended Measures; and 3.) the No-Action Alternative. In the BIA's view, any alternative other than Full Removal falls short in several ways. These other alternatives do not appear to consider the rehabilitation of any pertinent traditional cultural properties eligible for the National Register. There is no standard for meeting environmental justice objectives by protecting and restoring cultural resources for tribal communities. Those alternatives do not appear to support the creation of a place where tribes come to practice their cultural traditions. Lastly, there is no consideration for the restoration of upland forest, riparian, and floodplain habitat to a natural pre-Project condition, as referenced above. NPS has repeatedly flagged these concerns to FERC and advocated for Full Removal with certain modifications. Given that the Project occupies the lands of NPS, BIA strongly supports Full Removal consistent with the principles raised above and with NPS' comments on the EA and its alternatives.

The EA also contains an additional, mis-guided discussion of the proposed action and subsequent alternatives. Section 6.3 of the EA states, "we discuss the effects of the proposed action and alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects." We do not believe FERC's depiction of the "existing condition" to be an accurate one. The "existing condition" should not be the baseline against which effects should be measured. Instead, the "baseline" should be a determination of what measures should be taken to restore the land and waters within the project boundary to a state which reflects the time before the Project was constructed in 1921. We conclude that the Full Removal Alternative, if modified to include the principles discussed above, would serve as the best strategy for minimizing effects to trust resources resulting from the proposed action and restoring the site of the Project back to its historical pre 1921 condition. We herein refer to this alternative as the "Full Restoration Alternative," as proposed by the NPS for this proceeding.

To better assist in the implementation of this Full Restoration Alternative, we offer additional comments on certain aspects of the environmental analysis identified in the EA. These comments are intended to assist in the restoration of the project area to create an environment for the Tribes to carry out traditional practices, including religious ceremonies and treaty-reserved fishing and gathering rights. This approach will give a more balanced perspective of tribal views associated with the history of the Skagit Valley.

First, we think FERC's characterization of the vegetative resources in the Project area as "a few large Douglas fir and western red cedar trees with an understory consisting of a variety of shrubs, ferns, other herbaceous perennial, and mosses, common species include sword fern, salal, red huckleberry, and vine maple" is overly simple and fails to note resources of cultural significance to the area's Tribes. We agree with the Sauk-Suiattle Tribe's recommendation that the Project area should be surveyed by tribal persons with indigenous knowledge of plants of cultural significance.

To better assist in the restoration of the Project area, cultural resources staff of the interested tribes should be consulted to ensure a “mix of appropriate native plant species” to be included in the revegetation of the project area.

We also draw FERC’s attention to the soils analysis section in the EA beginning on page 9. In this section, FERC discusses the nature and historical background of any contaminants in the soils within the Project area:

“In 2018, additional investigations were performed to delineate the remaining lateral and vertical extent of metal and PAH contamination in the soil in the vicinity of the penstock and to collect data for the engineering evaluation/cost analysis. A site investigation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) states that expected impacts to surface water and groundwater would be minimal (Floyd Snider, 2022). Based on these factors, none of the contaminants of potential concern for human health were designated as contaminants of concern for human health because (1) soil is the only environmental medium that people could potentially encounter on an ongoing basis, and (2) the lack of recreational opportunities at the site. Based on analyses that incorporated problem formulation, exposure and effects assessment, and risk characterization (including an uncertainty analysis), none of the contaminants of potential ecological concern were designated as contaminants of ecological concern. Based on the findings of Floyd Snider (2022), current environmental conditions are protective of human health and the environment, comply with applicable or relevant and appropriate requirements, and are protective of short- and long-term public health and the community.”

While we are encouraged by the results of this analysis it is unclear whether these conclusions are based on the proposed action and associated alternatives, let alone the Full Restoration Alternative. The development and implementation of a Sediment and Erosion Control Plan (Plan) is identified as an element of the proposed action in the EA. This Plan is vague at best and refers to including a “summary of construction BMPs [Best Management Practices], typical detail drawings, and limits of construction.” We find this vagueness to be concerning and request that the final development of the Plan include specific provisions to minimize the impact of any contaminants that may be disturbed or become mobilized in water resources during the implementation of the proposed action to ensure complete restoration of the project area perpetuates a pre-1921 condition.

Thank you for the opportunity to comment on the EA. We challenge Seattle City Light and FERC to support the cultural needs of the Tribes and balance the physical and oral history of the Skagit River Valley. If you have questions or concerns on this matter, please feel free to contact Steve Lewis, Regional Hydropower Program Manager, at (360) 614-5896 or stephen.lewis@bia.gov.

Sincerely,


Bryan K. Mercier, Regional Director

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Bryan Mercier
Northwest Regional Director

cc: Brian Lanouette, Upper Skagit Indian Tribe
Jack Fiander, Sauk-Suiattle Tribe
Amy Trainer, Swinomish Tribal Indian Community
Ashley Rawhouser, National Park Service

LITERATURE CITED:

Floyd Snider. 2022. Seattle City Light Newhalem Penstock Engineering Evaluation/Cost Analysis. Prepared for City of Seattle – City Light Department. For submittal to the National Park Service. August. Filed with FERC on December 12, 2022. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20221212-5191 [Attachment AIR Request #9(1) and (2)].

Document Content (s)

[2024-05-09] SignedBIACommentsNewhalemCreekDecommissioning.pdf1