

**American Rivers • American Whitewater • National Parks Conservation Association
North Cascades Conservation Council • Sierra Club - Washington State Chapter
The Wilderness Society • Trout Unlimited • Washington Wild**

May 13, 2024

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

Re: Comments on Environmental Assessment for Application to Surrender License of the Newhalem Creek Hydroelectric Project (P-2705-037) on Newhalem Creek in Whatcom County, Washington.

Dear Acting Secretary Reese:

In response to the Federal Energy Regulatory Commission's March 29, 2024 *Notice of Availability of Environmental Assessment of the Newhalem Creek Hydroelectric Project, P-2705-037*,¹ American Rivers, American Whitewater, National Parks Conservation Association, North Cascades Conservation Council, Sierra Club - Washington State Chapter, The Wilderness Society, Trout Unlimited, and Washington Wild ("Conservation Groups") submit the following comments on the Environmental Assessment.²

Conservation Groups support the surrender and decommissioning of the project, located on the Newhalem Creek in Whatcom County, Washington on 6.4 acres of federal land administered by the National Park Service. Conservation Groups support the Full Removal Alternative where all aboveground project features including the penstock, powerhouse, and powerlines would be removed; this alternative is consistent with the requests from Tribes and the National Park Service. We oppose the Proposed Action for Partial Removal with Staff Recommended Measures as presented in the Environmental Assessment.

The basis of our opposition to the Proposed Action results from two significant concerns with the Environmental Assessment:

¹ Notice of Availability of Environmental Assessment re Seattle City Light's Newhalem Creek Hydroelectric Project under P-2705, FERC eLibrary Accession Number: 20240329-3016, <https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20240329-3016>.

² Environmental Assessment for Application to Surrender License for the Newhalem Creek Hydroelectric Project under P-2705, FERC eLibrary Accession Number: 20240319-5184, <https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20240319-5184>.

- 1) The Proposed Action of Partial Removal is inconsistent with federal Standards for Tribal Consultation specifically directing that “information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome.”³ The preferred alternative fails this basic commitment to recognize the unique, legally affirmed Nation-to-Nation relationship between Tribes in the Skagit River basin and the United States. The Upper Skagit Indian Tribe (USIT) states that “City Light should pursue full removal of all Project infrastructure including the powerhouse, trailrace, and penstock,” as “full removal is the only course for adequately protecting the USIT’s cultural resources and treaty rights.”⁴ The Sauk-Suiattle Tribe states that “the only lawful, and moral, alternative to adopt is full removal of all above-ground and submerged structures related to the Project.”⁵ The Environmental Assessment asserts that full removal of the Project would eliminate the locational context of historical facilities, but fails to recognize that keeping these facilities sacrifices an opportunity to restore a site that has cultural significance for area Tribes with its own locational context.
- 2) The Proposed Action of Partial Removal is inconsistent with 18 CFR § 6.2 stating as follows: “where project works have been constructed on lands of the United States the licensee will be required to restore the lands to a condition satisfactory to the Department having supervision over such lands and annual charges will continue until such restoration has been satisfactorily completed.” The Project is located entirely on federal lands within Ross Lake National Recreation Area, a National Park System unit, and the agency has requested that “analysis identify the complete removal alternative as the preferred alternative.”⁶

For the reasons above and others that may be included in comments from the National Park Service and Tribal Governments, Conservation Groups strongly support the Full Removal Alternative where all aboveground Project features including the penstock, powerhouse, and

³ Uniform Standards for Tribal Consultation, Memorandum for the Heads of Executive Departments and Agencies, 87 FR 74479, November 30, 2022,

<<https://www.federalregister.gov/documents/2022/12/05/2022-26555/uniform-standards-for-tribal-consultation>>.

⁴ At Page 1 of Attachment 1, Upper Skagit Indian Tribe’s Motion to Intervene and Comments on License Surrender Application under P-2705, FERC eLibrary Accession Number 20220531-5231,

<https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20220531-5231>.

⁵ At Page 6, Comments of Sauk-Suiattle Indian Tribe of Washington on Environmental Assessment for Application to Surrender License for the Newhalem Creek Hydroelectric Project under P-2705, FERC eLibrary Accession Number 20240426-5028, <https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20240426-5028>.

⁶ United States Department of the Interior, National Park Service submits comments re Surrender Application for the Newhalem Creek Hydroelectric Project under P-2705, FERC eLibrary Accession Number: 20220531-5374, <https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20220531-5374>.

powerlines would be removed. The Proposed Action as analyzed in the Environmental Assessment fails to adequately apply Standards for Tribal Consultation and is inconsistent with Federal Power Act requirements to restore lands to a condition satisfactory to the managing agency. The Proposed Action inappropriately emphasizes retention and interpretation of industrial facilities that have come at the expense of Tribes whose cultural resources and connection to the landscape has long been ignored. For further inquiries or follow up, please contact Thomas O'Keefe at okeefe@americanwhitewater.org or 425-417-9012.

Sincerely,

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cc:

Dawn Lindell, General Manager, Seattle City Light

Bruce Harrell, Mayor, City of Seattle

Dan Strauss, Chair, Finance, Native Communities & Tribal Governments, Seattle City Council

Tanya Woo, Chair, Sustainability, City Light, Arts & Culture, Seattle City Council

Patty Murray, US Senator (WA)

Maria Cantwell, US Senator (WA)

Rick Larsen, US Representative (WA-02)

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