



United States Department of the Interior



NATIONAL PARK SERVICE
North Cascades National Park Service Complex
810 State Route 20
Sedro Woolley, WA 98284

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

Dear Acting Secretary Reese:

Thank you for the opportunity to provide comments on the Environmental Assessment (EA) of the proposed decommissioning of the Newhalem Creek Hydroelectric Project (FERC No. 2705-037), (hereafter referred to as the Project) dated March 29, 2024.

The Project is located entirely on federal lands within Ross Lake National Recreation Area, a unit of the National Park Service (NPS). The NPS manages the area to meet the standards of the NPS Organic Act of 1916, “...to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

The only acceptable alternative to the NPS is a modified Full Removal Alternative. The NPS proposed modifications, retitled “Full Restoration Alternative”, are described in detail in Enclosure 1. Enclosure 1 also includes the NPS additional comments and recommendations on the alternatives, the EA, and the decommissioning plan.

The Full Restoration Alternative will:

- Rehabilitate a traditional cultural property (TCP) eligible for the National Register;
- Meet environmental justice objectives by protecting and restoring cultural resources for tribal communities;
- Provide a private location for tribes to practice religious ceremonies, treaty-reserved rights, and to pass down cultural knowledge in an area that is highly significant to them;
- Restore upland forest, riparian, and floodplain habitat to a natural condition;
- Eliminate the effects of long-term maintenance of the facilities on terrestrial, aquatic, and TCPs;
- Eliminate the risk to firefighters to protect facilities from structural and wildland fires; and
- Eliminate the life cycle costs required to maintain and protect facilities.

The Federal Energy Regulatory Commission’s regulations make clear that because this Project was constructed on lands of the United States, Seattle City Light (SCL) must restore those lands to a condition satisfactory to NPS.¹ The Full Restoration Alternative is the only alternative satisfactory to NPS. SCL’s use and occupation of NPS land for power development is conditioned upon, and only available under,

¹ 18 CFR 6.2 states “[w]here 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.”

Section 4(e) of the Federal Power Act (16. U.S.C. § 797 (e)). Once SCL's license is surrendered, there is no mechanism to facilitate SCL's proposed perpetual use and occupancy of NPS land. Once the Surrender Order becomes effective, SCL and SCL owned facilities will no longer be authorized to remain on NPS land. Therefore, all monitoring plans, management plans, and restoration actions must be approved by the NPS before decommissioning of the Newhalem Creek Hydroelectric Project may start.

The NPS does not agree that the Partial Removal alternative is necessary to mitigate the effects of decommissioning on historic properties. The Partial Removal, Full Removal, and Full Restoration alternatives will all adversely affect the National Register-listed Skagit River and Newhalem Creek Hydroelectric Projects Historic District (DT-66) through the removal of contributing historic properties. However, preservation of the penstock and powerhouse is not necessary for the continued existence of the historic district, which includes 58 contributing properties². Of these 58 properties, six are located within the Project area, but none of the six are individually eligible; instead, they derive their eligibility by contributing to DT-66. Additionally, we are aware that SCL is in the process of updating the DT-66 National Register Nomination and we have seen a draft with as many as 195 contributing properties³. Given the district's size and likely expansion, the removal of only two additional contributing properties beyond SCL's preferred alternative will not significantly affect the integrity of the district as a whole. The public will still have ample interpretive opportunities to access, experience, and learn about hydropower development in the Upper Skagit.

The powerhouse is not from the earliest period of hydropower development in the Skagit, which SCL prioritizes for preservation. The original powerhouse burned down in 1966, and SCL rebuilt it and the head works in 1969. The original Pelton turbines and generator were not destroyed by the fire and were re-installed in the new powerhouse. If agreed upon by SCL, the park, tribes, and the State Historic Preservation Office (SHPO), and through the National Historic Preservation Act Section 106 process and Cultural Resource Management Plan development, this equipment and portions of the other facilities could be retained and moved to the town of Newhalem to further enhance hydropower interpretation opportunities.

We strongly support the Upper Skagit Indian Tribe's position for the Full Restoration Alternative and concur that partial removal would have an adverse effect to the Tribe's TCP 45WH450. The integrity of the TCP largely depends on the historical character defined by natural landscape features, setting, and processes. Prior to the development of the hydropower project, these features of the historic character formed the basis for the Tribe's unique origin story and the basis for tribal members' spiritual and ceremonial practices. It is explicitly stated in the 45WH450 "Determination of Eligibility" that the historic built environment features, including dams, reservoirs, and their associated operational and maintenance facilities (i.e. Newhalem Powerhouse and penstock), diminish the integrity of the TCP

² Seattle City Light, DT-66 "The Skagit River and Newhalem Creek Hydroelectric Projects", National Register of Historic Places Updated Determination of Eligibility. Seattle, WA. December 21, 2010. [prod570930.pdf \(seattle.gov\)](#)

³ SCL is in the process of updating the DT-66 National Register of Historic Places nomination. In accordance with the License Order and Historic Properties Mitigation and Management Plan in p-533, SCL updates the nomination every ten years, and the last update was complete in 2010. The NPS has seen a draft table that assigns a preliminary recommendation of "Contributing" to a total of 195 resources (an additional 137 contributing resources from the 58 determined in the 2010 version). The draft document is the Skagit Project and Newhalem Creek Hydroelectric Project National Register Nomination Update 2023 - Preliminary Eligibility Recommendations (DRAFT) dated July 25, 2023.

(Mierendorf and Schuyler, 2019:15⁴). The National Register of Historic Places identifies three levels of significance – local, state, and national. TCP 45WH450 has a higher statewide significance with broader adverse effect implications than the locally significant historic district, DT-66. To that end, the NPS asserts the effects to 45WH450 should be given preference over the effects to DT-66; the Full Restoration Alternative will have direct, beneficial effects on an underrepresented resource with statewide significance.

Several federally recognized Indian tribes have expressed interest in establishing a location to carry out culturally significant activities and ceremonies in the upper Skagit Valley. The Upper Skagit Indian Tribe has informed the NPS that, should the Full Restoration Alternative be implemented, the restored location of the Newhalem Powerhouse is an ideal place for the Tribe to carry out traditional practices, including religious ceremonies and treaty-reserved fishing and gathering rights. The place name, “Newhalem,” is derived from the Lushootseed word “daxwálib,” the name of the most upriver indigenous longhouse community in this location. It is essential for the Upper Skagit Indian Tribe to practice their ceremonies in Newhalem as the location is highly significant to the Tribe. There are no other locations with privacy and river access this close to daxwálib.

The NPS also supports the Sauk-Suiattle Indian Tribe’s request for the Full Restoration alternative and other recommendations outlined in their comments filed with the Commission (Accession # 20240426-5028). We agree with their comments on prioritizing culturally significant plants for inclusion in the restoration plans as this could help strengthen tribes’ ability to practice their gathering treaty right. We also wish to emphasize our alignment with their desire to provide an area reserved for tribes at the site of the restored Powerhouse.

On April 19, 2024, the NPS and Upper Skagit Indian Tribe met with the Washington State Department of Archaeology and Historic Preservation (DAHP or SHPO) staff including Rob Whitlam, Michael Houser, and Maddie Levesque. The parties met to discuss our preferred alternative and justification for the removal of additional historic properties to benefit the Upper Skagit Indian Tribe’s TCP. DAHP agreed with our position and that the loss of the built environment properties could be easily mitigated. They expressed support for providing a place for tribes to practice their cultural traditions and to rehabilitate 45WH450.

For the City of Seattle, the establishment of the Newhalem Hydroelectric Project initiated a legacy of extracting resources from the Skagit Valley that led to the economic prosperity of Seattle. However, for the indigenous communities, who were disposed of their land, it was the beginning of a period of cultural upheaval and marginalization. The Skagit Valley does not need the partial remains of a hydroelectric project to tell the same or similar story due to the presence of the three other complete and functioning hydroelectric properties within the *same* historic district and townsite of Newhalem. The upper Skagit River Valley is saturated with these types of historic properties, and excessive focus has been given to hydroelectric history. It is time to elevate the stories and significance of indigenous historic properties to allow tribal communities to reconnect with traditional places and resources that are sacred to them. We encourage the City of Seattle and FERC to support the cultural needs of the Tribes and balance the stories told in and about the human history of the Skagit River Valley.

⁴ Mierendorf, Robert R. and Scott Schuyler "The Skagit River Gorge and Canyons, Whatcom County, Washington, 45WH450" National Register of Historic Places Determination of Eligibility. Upper Skagit Indian Tribe, Sedro-Woolley, WA, November 13, 2019.

Thank you for the opportunity to comment on the EA. We look forward to further collaboration with SCL, FERC, tribes, and other agency and nonprofit partners on these issues to ensure NPS will be able to attest that the decommissioning plan will restore NPS lands to a condition acceptable to the agency. If you have any questions, please contact Ashley Rawhouser at ashley_rawhouser@nps.gov.

Sincerely,

**DONALD
STRIKER** Digitally signed by
DONALD STRIKER
Date: 2024.05.13
09:01:13 -07'00'

Don Striker
Superintendent
North Cascades National Park Service Complex

cc: Ashley Rawhouser, Chief of Resource Management
Chris Townsend, Director of Natural Resources and Hydro Licensing, Seattle City Light
FERC service list

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Enclosure 1 - EA Comments and Recommendations

NPS Changes to the Proposed Action: Full Restoration Alternative (Full Removal Alternative with NPS Modifications)

The NPS requests that FERC incorporate the Full Restoration Alternative into the Final EA and License Order and identify it as the Preferred Alternative. The Full Restoration Alternative consists of the Full Removal Alternative with the following modifications:

- Retain the road and bridge from the Newhalem Campground to the Powerhouse.
- Evaluate for removal the Penstock, penstock thrusts, walk way, and cradles located in the tunnel.
- Remove the following facilities (see Enclosures 3 and 4, for images of these facilities):
 - Hilfinker wall and associated access road;
 - Cement retaining wall associated with the access road;
 - All above and below ground power lines, power poles, power pole anchors, and associated underground vaults;
 - All transformers and cement bollards;
 - Above ground penstock, penstock thrusts, and cradles;
 - Electrical cables and conduit attached to penstock saddles and telephone line laying on the ground adjacent to the penstock;
 - Viewing platform constructed of treated lumber on the lower portion of the penstock;
 - Six-inch diameter PVC pipe adjacent to the penstock;
 - Rock retaining fencing and posts above the penstock tunnel entrance;
 - Telephone, circuit breaker, lights, and six-inch PVC pipe inside of the penstock tunnel; and
 - Electrical conduit, lights, telephone line, and anchors in the penstock tunnel.

See Table 1 for a comparison of the three alternatives.

The Full Restoration Alternative is necessary to restore NPS lands consistent with the Organic Act, the Ross Lake Recreation Area (ROLA) Enabling Legislation, and NPS policies which require the restoration of NPS lands to natural conditions for ecological and traditional cultural purposes (see Enclosure 2). As described in the cover letter, this alternative emphasizes the protection of TCP 45WH450 and promotes the use of traditional cultural practices. Retaining the road from the Rock Shelter Trailhead to the Powerhouse will enable vehicle access for tribal use (namely transporting tribal elders). The alternative will meet environmental justice objectives and reduce the effects to recreation. Removing the additional facilities will ensure the land is restored consistent with NPS policies and 18 C.F.R. 6.2. With surrender of the FERC license, these facilities no longer serve a purpose and should be removed to not impair NPS land, water, and resources. Many of the elements NPS requests to be removed were not specifically addressed in SCL's decommissioning report or FERC's EA. The EA describes the Full Removal Alternative as removing all above-ground features but does not include some above-ground features in the description. We are providing a detailed list of the above and below-ground elements to be removed to ensure clarity on the Full Restoration Alternative.

The NPS also requests that impacts associated with the removal of the penstock and any supporting structures in the tunnel need to be evaluated to determine if the short-term negative impacts of a

removal action outweigh the long-term beneficial impacts of removal. As part of this evaluation, we request that the compounds used to treat the wood cradles, walkway planks, and the extent of any soil contamination in the tunnel should be determined. (Enclosure 3, Figure 7).

The NPS does not support the disposal of concrete or the use of slurry for transporting debris into the vertical portion of the power tunnel and requests that all concrete be removed from NPS land and disposed of offsite. Disposing of concrete in the tunnel would effectively turn the power tunnel into a dump site. Use of slurry to transport material would have potential water quality impacts. If the tunnel must be filled, we recommend using native material from the landslide adjacent to the headworks access road.

Table 1. Comparison of Facilities Removed Under the Various Alternatives

Facilities	Partial Alternative	Full Removal	Full Restoration Alternative
45-foot-long by 10-foot-high concrete, overflow diversion dam	Remove	Remove	Remove
Combination sluiceway/intake structure and small gatehouse at the dam	Remove	Remove	Remove
Pedestrian bridge from the diversion dam access road to the gatehouse	Remove	Remove	Remove
Access road to the diversion dam:	(a) Above 840 ft Remove (b) Below 840 ft Remain	(a) Above 840 ft Remove (b) Below 840 ft Remain	(a) Above 840 ft Remove (b) Below 840 ft Remain
Cement retaining wall associated with the access road (Figure 13, Enclosure 3)	TBD	TBD	Remove/ restore
Hilfinker wall associated access road	TBD	TBD	Remove/ restore
55-foot-tall, 5-foot-by-5-foot unlined rock vertical shaft that conveys water from the intake to the power tunnel	<i>Remain</i>	<i>Remain</i>	<i>Remain</i>
2,700-foot-long unlined rock power tunnel;	<i>Remain</i>	<i>Remain</i>	<i>Remain</i>
350-foot-long tailrace channel that discharges into the Skagit River	<i>Remain/</i> <i>restore</i>	<i>Remain/</i> <i>restore</i>	<i>Remain/</i> <i>restore</i>
218-foot-long, 33-inch-diameter steel penstock, penstock cradles and walkway planking that conveys water inside the power tunnel	<i>Remain</i>	Remove	TBD
707-foot-long, 33-inch-diameter steel penstock that conveys water from the rock power tunnel opening to the powerhouse	<i>Remain</i>	Remove	Remove
6 concrete thrust blocks and 56 concrete and/or wooden penstock support saddles	<i>Remain</i>	Remove	Remove
30-foot by 56-foot wood-framed powerhouse	<i>Remain</i>	Remove	Remove

Facilities	Partial Alternative	Full Removal	Full Restoration Alternative
One double-overhung Pelton impulse turbine (2,250 kilowatts) connected to a single generating unit rated at 2,125 kilowatts	<i>Remain</i>	Remove or possibly move for interpretive purposes	Remove or possibly move for interpretive purposes
3.6-foot-high, 18-foot-wide concrete tailrace fish barrier with concrete wing walls	Remove	Remove	Remove
Rip-rap associated with the tailrace barrier	Unknown	Unknown	Remove
7.2-kilovolt transmission line, consisting of: (a) a 350-foot-long buried cable; (b) 400-foot-long cables over the Skagit River to Newhalem; (c) a 3,000-foot-long buried cable; and (d) 637-foot-long overhead cables and 6 poles crossing the Skagit River to the Gorge Powerhouse (part of the Skagit River Hydroelectric Project No. 553);	<i>Remain</i>	Remove above ground cables and poles	Remove above ground cables and poles
Underground transmission lines and vaults (Figure 1, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Access road from the Newhalem Creek Campground to the powerhouse.	<i>Remain</i>	Remove	<i>Remain</i>
Transformers and cement bollards adjacent to the Newhalem Powerhouse (Figure 2, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Electrical cables and conduit attached to penstock saddles and telephone line laying on the ground adjacent to the penstock (Figure 3, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Viewing platform constructed of treated lumber on the lower portion of the penstock (Figure 4, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Six-inch diameter PVC pipe adjacent to the penstock	<i>Remain</i>	<i>Remain</i>	Remove
Telephone, circuit breaker, lights, and six-inch PVC pipe inside of the penstock tunnel (Figure 6, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Electrical conduit, lights, telephone line, and anchors in the penstock tunnel (Figure 7, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Penstock tunnel opening debris retaining fencing and posts (Figure 11, Enclosure 3)	<i>Remain</i>	<i>Remain</i>	Remove
Two culverts associated with the evacuation route and Trail of the Cedars that cross an intermittent stream channel.	<i>Remain</i>	<i>Remain</i>	<i>Remain/</i> replace with AOP culverts

Modifications and Additions to the Proposed Management and Monitoring Plans

Since the management plans were not included in the EA, the NPS requests as a condition of the Surrender Order that the NPS be given the authority to approve all monitoring plans, management

plans, and restoration actions before implementation. NPS approval will be necessary to ensure that lands are restored to a condition satisfactory to the NPS—the federal land management agency. To help facilitate this process we provide the following comments and revisions to the proposed management and monitoring plans. We ask FERC to include these changes as Surrender Order conditions to protect and restore NPS land.

Invasive Plant Management Plan

We support the objectives outlined for this plan in the EA, recommend using the Lower Klamath Management Plan⁵ as a template, and request additional objectives to:

1. Delineate and map a Vegetation Management Area (VMA) to document where the plan will be implemented. This area should include 1) a minimum 50-meter buffer that extends beyond the FERC project boundary, 2) all existing and potential new roads, trails and access points that are required to access the FERC project where equipment and personnel could reasonably come into contact with and transport invasive propagules (this would exclude all currently paved roads), and 3) areas used to stage equipment and materials.
2. Include consultation with interested tribes on the protection of plants with cultural values and the extent of the VMA in this plan and the Restoration Plan.
3. Include measures for prevention, early detection and rapid response, control, and monitoring of non-native and invasive plant species identified by the NPS and those on the current noxious weed list for Whatcom County in the VMA.
4. Complete a survey prior to the initiation of decommissioning activities to document the distribution and abundance of the invasive plants within the VMA to establish a baseline of existing conditions.
5. Implement and ensure compliance with Best Management Practices (BMPs) to prevent the introduction and spread of invasive plants during all phases of construction and restoration activities as described in the EA. This may include treatments prior to disturbing the road bed as part of decommissioning and would be done in consultation with the NPS.
6. Implement and ensure compliance with BMPs to minimize impacts to non-target plants (with an emphasis placed on tribally important plants) in the VMA and prevent impacts to non-target organisms in riparian and aquatic habitat.
7. Suppress invasive plants in the VMA to prevent their spread until the successful completion of the Restoration Plan.
8. Establish performance criteria based on the relative frequency of non-native plants measured as the percentage of all nonnative plants present relative to native species⁵ to evaluate the implementation of the Invasive Plant Management Plan.
9. Conduct repeatable surveys with documented levels of effort of the VMA on an annual basis to determine the distribution, abundance, and frequency of invasive plants.
10. Successfully conclude implementation of the plan when the Restoration Plan objectives are met and the relative frequency of native vegetation represents a minimum of 98% plant cover in the VMA.

⁵ Lower Klamath Project FERC Project No. 14803, Exhibit J Reservoir Area Management Plan, Klamath River Renewal Corporation 2001 Addison Street, Suite 317 Berkeley, CA 94704, February 2021. (Accession # 20210226-5093)

Restoration Plan

The NPS agrees with FERC's determination on the scope and components of this plan. We also recommend using the Lower Klamath Management Plan⁵ as a template for the plan and request additional objectives to:

1. Consult intervening tribes on the species of plants that are reseeded and planted and other aspects of the plan.
2. Focus on restoration efforts that promote the natural recruitment and establishment of native plants.
3. Plant shrubs and trees in sensitive areas or in locations where natural recruitment may take longer than 10 years.
4. Establish performance criteria for tree and shrub density based on a percentage of densities observed in representative target plant communities found in the VMA.
5. Establish performance criteria for vegetation cover that includes herbaceous and woody species and is calculated as the inverse of bare ground encountered along line-intercepts.
6. Successfully conclude implementation of the plan when:
 - a. Shrub and tree density criteria represent 70% of upland and 85% of riparian plant densities in representative reference communities.
 - b. Vegetation cover criteria for disturbed ground is 95% (excluding roads, parking areas, trails, and potential campsites).

Sediment and Erosion Control Plan

The NPS supports the decision to forgo the construction of a grade control structure in Newhalem Creek if adequate monitoring and adaptive management strategies are incorporated into this plan. Monitoring needs to be conducted to confirm the assumptions of the lower bounding estimate of stream bed erosion described in Dube 2023 and on pages 12-14 of the EA are met and to determine if road decommissioning actions are adequately mitigating the impacts of the slope failure associated with the headworks access road. The NPS finds that three years of monitoring to assess the impacts of erosion in Newhalem Creek after dam removal will be insufficient. The geomorphic response of dam removal on stream bed and bank erosion will happen during high flow events that have decadal recurrence intervals. This is supported by the findings from the geomorphology report developed for this project and cited in the EA (page 12) which describes a re-adjustment that happens slowly over a long time frame. This report (Dube 2022) states, "*Because of the coarse nature of the streambed (cobble/boulder/gravel), the re-adjustment to the new base level would likely take place relatively slowly, over decadal or longer time scale following the initial channel adjustment close to the diversion structure.*" Therefore, we request, that monitoring continue until at least two flood events over 1,500 cfs (2-year flood, Dube 2022) and one flood event over 3,200 cfs (5-year flood, Dube 2022) have occurred in Newhalem Creek over three separate years.

We agree with Commission staff that monitoring should include an assessment of "*barriers to fish passage that may develop due to sediment movement that have the potential to impede the passage of salmon, steelhead, bull trout or Dolly Varden into or within the lower 0.65-mile section of Newhalem Creek.*" In addition to this, we also request that monitoring be conducted prior to deconstruction activities and after the high flow events previously described. We also request monitoring activities include:

1. Cross sectional measurements of wetted widths and depths (including thalweg depth) at no less than five equally spaced transects on the alluvial fan of Newhalem Creek where it enters the Skagit River;
2. Measurements of the maximum longitudinal distance the Newhalem Creek alluvial fan extends into the Skagit River;
3. Photographs depicting the habitat features of the alluvial fan;
4. Annual measurements of residual pool depths for all channel spanning pools within the lower 0.65-mile section of Newhalem Creek;
5. Annual measurements of sediment particle sizes and embeddedness using Wolman pebble counts (n = 250/site) conducted in riffle habitat at two locations: 1) below the Newhalem Creek bridge and 2) between the Newhalem Creek Bridge and the falls; and
6. An assessment stream bed and bank erosion at two locations: 1) above the falls and 2) at the site where the slope failure intersects with the stream below the falls.

If monitoring indicates that erosion of the streambed and/or banks (including the toe of hill slope failure associated with dam access road) are causing impacts to fish movement in and out of Newhalem Creek, decreasing residual pool depths, increasing fine sediment and embeddedness, and/or increasing turbidity (see Water Quality Plan) we request the plan include an adaptive management strategy that provides the opportunity for intervenors to evaluate stream conditions and work with the licensee to implement measures to mitigate the impacts or to extend monitoring actions to determine if the impacts will naturally resolve.

Road Decommissioning Plan

The Dam Access Road work will require truckloads of material to be transported down the NPS road and over the bridge crossing the Skagit River. The NPS supports FERC's determination on page 5 of the EA, *"Identify any roadway repairs, safety measures, or road closures needed during the decommissioning, including closure of the one-lane bridge that provides access to the project from State Route 20."* In addition to this, the NPS requests the Road Decommissioning Plan identify any roadway repairs, safety measures, or road closures needed for the decommissioning process to prevent and mitigate damage along roads and bridges that may occur because of dam removal and road decommissioning activities.

The NPS requests that all culverts are removed, natural drainage restored, and road ditches are filled. The road surface should be scarified first with the excavated material placed on the cut slope as appropriate to maintain or improve stability of the site and long-term drainage. When decommissioning the road, the NPS recommends that microtopography features are created to help facilitate native plant regeneration on the scarified roadbed. We also request organic material be added to a depth of four inches on top of mineral soil surfaces to facilitate natural regeneration. The plan should also include restoration actions for the stream crossing that incorporates temporary erosion control and plantings.

We request water bar spacing be done in consultation with the NPS and follow the guidelines outlined in the Washington Department of Natural Resources (WADNR) BMPs (WADNR 2006), within WAC 222-24-052(3). Water bar density should be increased on either side of the landslide and anywhere on the roadbed that currently exhibits tension cracks. In relation to the stream crossing that is to be day-lighted on the road the following points will apply as per WAC 222-24-052(3):

- A completed Forest Practices Application (FPA/N) from WADNR may be required. A Hydrologic Project Approval (HPA) from Washington Department of Fish and Wildlife (WDFW) may be required.
- Re-establish the natural streambed as close to the original location as possible and so it matches the up and downstream width and gradient characteristics.
- Place all excavated material in stable locations.
- Leave stream channels and side slopes at a stable angle.

Matching the grade from inlet to outlet of the stream should be done to mitigate head cutting or placement of energy dissipaters. Placement of slash in a flume-based design as per the 2023 report prepared for the Washington State Department of Transportation (WSDOT) is not appropriate since it has only been tested on slopes of less than or equal to 4% (Fourty et al, 2023) and these conditions are likely not achievable at this site. If grade cannot be matched, SCL should consult with the NPS on appropriate energy dissipaters.

NPS also requests that the impacts of the landslide/hill slope failure caused by the road should be mitigated by removal of the concrete retaining wall, all or part of the Hilfinker wall (working in cooperation with the NPS and tribal parties to determine the best approach), restoring natural drainage to these slopes, and contouring the slope to match existing natural topography. Landslide debris that must be cleared from the road to access the site can be temporarily stored on-site. The material then can be used to fill drainage ditches and contour the slope of the scarified roadbed and parking lot when appropriate. Leaving the Hilfinker wall in place represents an unacceptable risk of a catastrophic failure when these structures become overloaded by landslide debris as the rebar lattice deteriorates. This potential for a large release of material into Newhalem Creek due to these constructed conditions could have major adverse impacts to the aquatic life and culturally significant values of Newhalem Creek. The NPS finds this risk and potential burden of having to mitigate the impacts of a failure unacceptable. Removing the Hilfinker wall and re-establishing natural drainage and contour of the slope is a reasonable mitigation and will result in the best outcome for the natural and cultural resources in lower Newhalem Creek.

Additional Recommended Plans and Best Management Practices

Water Quality Monitoring and Management Plan

The NPS also recommends that SCL develop a Water Quality Monitoring and Management Plan. The purpose of the plan is to describe the methodology and procedures SCL will implement to evaluate water quality conditions associated with decommissioning. This information will be needed to assess project-related effects and to inform adaptive management actions to protect aquatic resources including ESA listed Bull Trout, Steelhead, and Chinook. The plan should include continuous hourly measurements of water temperature, pH, and turbidity measured on a year-round basis until a minimum of two 1,500 cfs and one 3,200 cfs magnitude flows have occurred over three separate years. Adding these parameters to USGS gaging station 12178150 would likely be a cost-effective means of fulfilling these requirements.

Soundscape Protection Best Management Practices

As part of the decommissioning plan, to protect soundscapes, SCL should conduct on-site noise monitoring and make real-time adjustments to operations, if necessary, in consultation with the NPS on a weekly basis. The recommended noise abatement measures include:

- Limit construction noise to 8 AM to 5 PM to reduce effects to visitors in the Newhalem Campground;
- Use of the best available noise-control techniques wherever feasible;
- Eliminate equipment idling unless necessary for safety or mechanical reasons;
- Use hydraulically or electrically powered impact tools when feasible;
- Locate temporary noise sources as far from sensitive uses as possible;
- Install mufflers and sound attenuation devices on equipment and employ special purpose pads; liners, and enclosures to reduce noise.

Partial Removal Alternative

The Partial Removal Alternative is not acceptable to NPS. Once the Surrender Order becomes effective, SCL and SCL owned facilities will no longer be authorized to remain on NPS land, and under 18 C.F.R. § 6.2 SCL is *required* to restore the lands to a condition satisfactory to NPS. However, to fully respond to the concerns raised in FERC's EA NPS submits the following comments.

Decommissioning Plan

The NPS requests that SCL and FERC develop additional measures as part of the Decommissioning Plan to address the penstock's long-term maintenance, stability, and vegetation management. (See the environmental effects analysis section for more information).

Fire Protection Plan

If the powerhouse and penstock are left in place SCL will need to develop a Fire Protection Plan to address structural and wildfire risk and any associated protection measures for the remaining facilities. The plan should be developed in consultation with interested parties and approved by the NPS.

Hazard Tree Protection and Reforestation Plan

If the powerhouse and penstock are left in place SCL will need to develop a plan to manage hazard trees, preserve culturally modified trees, and plant trees to maintain the complex stand structure that is characteristic of late successional forests. The plan should include a 1:1 replacement of cut trees.

Comments on the Environmental Effects Analysis

The NPS provides the following comments on the environmental effects analysis based on NPS observations, additional information, and analysis.

Issues Not Considered

The NPS recommends that the EA analyze and include mitigation measures to address the following issues for the Partial Removal Alternative:

- Fire protection of powerhouse and other remaining facilities,
- Hazard tree management around powerhouse and penstock, and
- Slope stability and long-term maintenance of penstock that may require clearing for ground access.

Insufficient and Inaccurate Information and Analysis

Diversion Dam Access Road

On page 17 the EA states: “*City Light (2022g) states that the failing road conditions are caused by slope instability in an active landslide area and by original road construction methods.*” This conclusion by SCL omits several critical factors that are relevant in determining their responsibility for the current conditions of the slope instability at this location. These factors include that SCL:

- Used this road to reconstruct the existing concrete headworks in 1969 and then continued to use the road and maintain the road to maintain and operate the existing facilities. Including repairs to the headworks following a flood in 1980;
- Did not maintain appropriate slope drainage above the Hilfinker wall or install erosion control measures throughout their use of the road;
- Removed material from the toe of the slope failure (adjacent to the road) which likely increased the rate of slope unravel;
- Constructed the Hilfinker wall as documented by SCL in 1985 (Enclosure 4).

Penstock long-term stability

The Partial Removal Alternative of the EA and Decommissioning Plan is deficient in addressing the penstock’s long-term maintenance, stability, and the impacts of vegetation management. Factors that were not assessed include: 1) the effects of precipitation and soil erodibility on penstock stability, 2) existing condition of above ground penstock cradles and supporting structures, 3) corrosion of concrete penstock cradles, and 4) impacts to terrestrial habitat related to hazard tree management. When combined, these factors indicate that the long-term stability of the penstock will require significant levels of maintenance to ensure the integrity of the structures, negatively impact forest structure and wildlife habitat, and place personnel at unnecessary risk when managing hazard trees.

The penstock and its associated saddles are placed on steep slopes in two sections of their length below the tunnel. The upper section of the penstock is constructed over more stable soils and bedrock (Map Unit Symbol 7003, Figures 1 and 2) however, the lower section above the Powerhouse is composed of loose glacial deposits (Map Unit Symbol 6015, Figures 1 and 2) which is the area of greatest concern due to its high erodibility. In addition, the cradles above the Powerhouse are not deeply buried and many of them have exposed bases that are exhibiting preferential erosion beneath them. Untreated logs were placed parallel with these cradles that exhibit rot, erosion, and movement (Figures 8 -10, Enclosure 3). The high amount of precipitation (79 inches/year measured at the closed weather station) causes slope run-off that will continue to undercut these saddles on this steep slope necessitating short and long-term maintenance.

Under the Partial Removal Alternative, maintenance for the penstocks is limited to painting every 10 to 20 years. If the penstock remains, there will be continued erosion and slope stability issues under the penstock cradles where slopes are more than 40 percent, which will threaten the integrity and function of the penstock. Contrary to the EA’s assertion that no detailed soils survey has been completed in the Newhalem Creek area, the Natural Resource Conservation Service (NRCS) published a soil survey of the project area in 2012⁶. Below are the mapped soils and a key (Figures 1 and 2).

⁶ Natural Resources Conservation Service. Soil Survey of North Cascades National Park Complex. 2012. Washington, USDA NRCS.

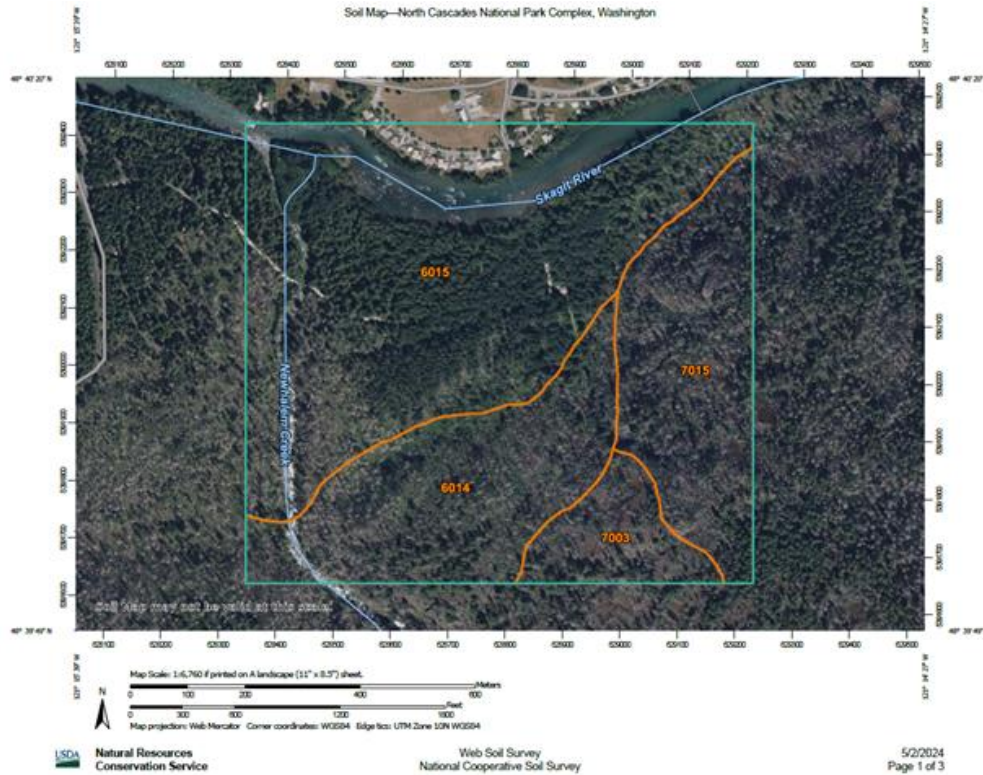


Figure 1 – Soil Map, NRCS Report, 2012 (see legend below).

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
6014	Thornton-Ragged-Ledeir complex, 15 to 65 percent slopes	37.4	21.4%
6015	Tricooni-Ragged-Easy complex, 5 to 50 percent slopes	93.8	53.6%
7003	Benzarino-Ragged-Rock outorop complex, 35 to 100 percent slopes	11.2	6.4%
7015	Thornton-Ragged-Benazarino complex, 35 to 100 percent slopes	32.6	18.6%
Totals for Area of Interest		175.1	100.0%

Figure 2. Corrosion of Concrete Map, NRCS, 2012, (see legend below).

The following points are noteworthy about the soil units #6015 and #6014, which are mapped below the penstock. Both have a rating of “high” for risk regarding their corrosion of concrete. This rating “pertains to potential soil-induced electrochemical or chemical action that corrodes or weakens concrete (NRCS 2012)”. Both soil units have a slope/erodibility rate of 0.95 and are ranked as “severe” for erosion

hazard. As per the soil survey “numerical ratings indicate the severity of individual limitations. The ratings are shown as decimal fractions ranging from 0.01 to 1.00. They indicate gradations between the point at which a soil feature has the greatest negative impact on the specified aspect of forestland management (1.0) and the point at which the soil feature is not a limitation (0.00) (NRCS 2012)”.

Additionally, over time, trees will grow adjacent to the penstock saddles, and this will impact their ability to support the penstock especially when trees tip, exposing root balls and undermining the soil adjacent to the saddles on steep slopes. In addition, hazard trees will eventually fall on the penstock damaging its integrity. These hazards also exist for the section of the penstock built on the flat slope. Another hazard not evaluated is the potential rockfall damage from the slopes above. The current system of a chain link fence above the tunnel is insufficient for rockfall protection, and the NPS cannot maintain rockfall protection above the penstock where it exits the tunnel (Figures 11 and 12 in Enclosure 3).

Some of the saddles still in place at the upper part of the penstock were not replaced in 2016; they are made of wood (likely treated with hazardous substances) and are eroded. Therefore, their integrity to hold up the penstock is questionable due to the construction material type, even though the slope angle is very shallow at this location. They will eventually rot and require replacement to maintain the function and support of the penstock (Enclosure 3, Figure 12).

Since these slopes lack the long-term stability to support the penstock, the saddles will eventually shift, sediment will move downslope, and contaminants may be exposed by erosional processes or tree tipping as the forest is allowed to mature around the penstock. Therefore, the NPS disagrees with FERC’s conclusion on page 18 of the EA, *“By retaining the penstock, soil disturbance along the penstock route would be minimal, and no negative effects would occur.”* Our assessment indicates that leaving the penstock and penstock cradles in place will require significant amounts of maintenance to manage erosion, corrosion of the concrete penstock saddles, and to manage hazard trees (which have a large habitat value and should be left standing) to prevent undermining of the cradles due to tree tipping and structural damage to the penstock itself. Under the Partial Removal Alternative the burden to maintain the penstock and cradles would fall on the NPS which we find unacceptable.

Tunnel Drainage and Stability

It is unclear how much runoff will occur once the diversion dam is removed and the upper end of the penstock tunnel blocked. This is an important point to understand for tailrace restoration and slope stability below the tunnel exit. Currently, there is outflow from the tunnel that is not captured by the penstock and instead travels out a small pipe onto the slope. This amount of drainage is small and is currently poorly managed by SCL since it is allowed to travel to the base of the penstock saddles instead of over a bedrock surface to disperse erosion. This small amount of drainage could be managed with some erosion control and flow direction to avoid adverse impacts to the surrounding soil and geology.

Tunnel Leakage and Penstock Conveyance of Water.

On page 17 of the EA, FERC concludes that continuing to direct tunnel leakage through the penstock, under the proposed alternative, would provide the highest level of protection against erosion and potential risks from contaminants that are in the soil near the penstock. We find that routing water through the penstock might minimize erosion but would also preclude colonization and utilization of this resource for aquatic and riparian organisms. In addition, the high amount of bedrock along the slope of the upper portion of the penstock where it exits the tunnel would not likely be highly impacted by this

surface water. Below this point the surface water can be directed into an existing intermittent stream or be allowed to infiltrate into the groundwater, where it contacts the glacial deposits and be expressed as surface water as it joins the current stream at the base of the slope. Removing contaminants within the soils below the penstock saddles is the preferred option to protect health and safety.

Soils and Contaminants

We dispute a determination in the EA that full removal would present more risks from hazardous substances than partial removal (Section 6.3.1.2, p. 18). A thorough sampling and evaluation of the nature and extent of contamination should be completed prior to vacating or removing any structures, even if that means cutting or drilling down to the soil layers below the structures. In the long-term, Commission staff expect a permanent beneficial effect from removing any soils containing hazardous materials during construction, and we concur. SCL already proposes to remove structures that may have caused the contamination, so removing additional structures, one of which has already had a removal action (penstock saddles), should not be an issue. The more structures that are removed and media restored, the better it is for human health and the environment.

While the EA identifies short-term sediment mobilization and downstream transport in both the partial and full dam removal alternatives, it does not address the potential for contamination from toxic concentrations of mineral or organic chemicals (e.g., mercury, polychlorinated biphenyls (PCBs) or the need to remove or contain these chemicals to prevent downstream contamination.⁷ Given that impounded sediments may be found to contain contaminants, there may be an even greater need to keep them from migrating downstream until restoration efforts are complete. Given this, the NPS recommends, prior to removal of the dam structures, that impounded sediments be tested for contaminant constituents and, if present, be first remediated (removed) before dam removal begins.

SCL asserts that it has begun its sampling efforts to assess whether contamination exists; however, this information was not provided in the EA. The NPS requests that SCL send sampling and analysis plans and results to the NPS for approval. We also request that the wood penstock saddles, wood walkway, and soils in the penstock tunnel be assessed for contaminants.

SCL will continue to be liable for cleanup should the structures be removed or destroyed due to wildfire after the area is removed from FERC's hydropower boundary. None of the work actions in the EA or decommission plans will release SCL from future responsibility. As the current landowner, the NPS requests that FERC hold SCL as the responsible party to complete full removal of all structures with a history of contamination or that present a future source of contamination in event of wildfire.

Cultural Resources

The Newhalem area is rich in pre-contact cultural history, and evidence of indigenous use of the area is abundant. There is likely much more in the area that we have yet to identify. The NPS disagrees with the following statement on page 56 of the EA, "*According to City Light's 1992 license application, no archaeological evidence of the Upper Skagit village that was located near the Newhalem Project*

⁷ Congressional Research Service. "Dam Removal: The Federal Role." Updated March 15, 2024. Accessed at: [Dam Removal: The Federal Role \(congress.gov\)](#).

remains, and it is likely that any associated cultural materials have long since eroded and been redeposited downstream."

SCL initiated two new historic property inventories for the decommissioning project to identify properties potentially affected by the undertaking (Bush et al. 2024; Lentz and Tavel 2024⁸) but has not filed these draft inventories with FERC. As a consequence, the effects analysis in the Historic Built Environment section is inadequate because FERC did not have the newest data before releasing the EA. The NPS requests that FERC update the EA and its effects analysis with the latest historic property inventories. In our review of the draft inventories, the NPS identified some crucial findings relevant to the EA analysis. The Historic Built Environment section should:

- identify six contributing and three non-contributing resources in the Project,
- describe the historic district DT-66 significance as local significance, and
- identify that all six contributing resources are not individually eligible.

Table 2 compares the changes by decommissioning alternatives to the six contributing resources of DT-66. As described in the cover letter, DT-66 has 58 contributing resources. According to a draft update to the nomination currently underway by SCL, of the 254 individual entries listed, 195 are preliminarily determined to be contributing, 28 noncontributing, 17 unevaluated, 10 to be determined, and 4 delisted.

Archeological sites are abundant in the Area of Potential Effect. The updated SCL inventory by Bush et al. 2024 identified two additional archeological sites that FERC did not include in the EA. Archeological site 45WH477 should be included in the analysis. The site is highly significant to the tribes and within close proximity to the Project. Archeological site 45WH1029 was determined ineligible under criteria D but is being added as a contributing resource to TCP 45WH1029 by the Upper Skagit Indian Tribe.

In the TCP section, FERC should add that the Upper Skagit Indian Tribe's TCP, 45WH450, has statewide significance. Table 3 shows some of the contributing archeological site of this statewide significant resource within a two-mile radius. The majority of 45WH450 seventeen contributing sites are within two miles of the Project.

Additionally, the Swinomish Indian Tribal Community recorded a TCP on the Project lands. This information is in the public summary of the TCP Inventory for the Skagit Hydropower Relicensing docket P-553-000 (Accession #20240328-5150). This potentially eligible historic property has not been considered in the assessment, and the Tribe should be directly consulted with to determine the undertakings' effects. On page 59 in the TCP section the effects on the Swinomish Indian Tribal Community TCP are not discussed. Consultation with the Tribe is necessary to evaluate the effects. It is unclear if other Tribes' TCPs are on the Project lands as well.

⁸ 2024 (Draft) Bush, Kelly R., Emma S. Dubois, Madison N. Henley and Leah Koch-Michael. Cultural Resources Survey Report: Newhalem Creek Hydroelectric Decommissioning Project, Newhalem, Whatcom County, Washington; Prepared for Seattle City Light, Seattle, WA.
2024 (Draft) Lentz, Corey, and January Tavel. Evaluation of the Historic Built Environment for the Newhalem Creek Hydroelectric Project Decommissioning, Newhalem, Whatcom County, Washington. January. (ICF 103729.0.003.01). Prepared by ICF, Seattle, WA. Prepared for Seattle City Light, Seattle, WA.

The Project is entirely on NPS lands, and the federal protection afforded by NHPA would continue under NPS jurisdiction. Therefore, the following statement on page 58 of the EA is incorrect.

“Commission staff finds the proposed surrender of the project and removal of project facilities would end the Commission’s jurisdiction over archaeological sites, historic hydroelectric facilities, and TCPs that are located within the project APE and would remove these resources from the federal protection afforded by the NHPA.”

FERC and SCL must consult with the Upper Skagit Indian Tribe and all other tribes who are interested in the area to ensure that archeological resources are protected. FERC and SCL should also consult with the NPS and the Washington SHPO. Page 58 only acknowledges consultation with the USIT,

“However, City Light acknowledges that decommissioning could disturb previously unidentified archaeological resources located in an unsurveyed area between the diversion dam and the tailrace fish barrier and indicates consultation with the USIT continues regarding mitigation for adverse effects.”

SCL must consult with the Upper Skagit Indian Tribe and all other tribes that identify as having an interest in the area for the development of the CRMMP. The NPS and the Washington State SHPO must also be consulted. *“Commission staff finds that development of a CRMMP, as proposed, in consultation with the USIT, would serve to adequately mitigate for any realized adverse effects to archaeological resources.”*

The NPS also requests that FERC further analyze the effects of the Full Removal and Full Restoration alternatives on all Historic Property types. The integrity of TCP 45WH450 largely depends on the historic character defined by natural landscape features, setting, and processes. Prior to the development of the hydro project, these features of the historic character formed the basis for the Tribe’s unique origin story and the basis for tribal members’ spiritual and ceremonial practices. The 45WH450 Determination of Eligibility explicitly stated that the historic built environment features, including dams, reservoirs, and their associated operational and maintenance facilities (e.g. Newhalem Powerhouse and penstock), diminish the TCP’s integrity (Mierendorf and Schuyler, 2019:15A⁹). Furthermore, 45WH450 has statewide significance with broader adverse effect implications than the locally significant historic district, DT-66. The effects to 45WH450 should be given preference over the effects to DT-66 and the Full Restoration Alternative will have direct, beneficial effects to an underrepresented resource with statewide significance.

Page 60 of the EA states, *“According to the USIT, the only appropriate mitigation for potential effects of decommissioning on TCP 45WH450 is the complete removal of the Newhalem Project powerhouse and penstock. We agree that this would return the project area closer to its preproject condition. In turn, this could improve fishing, hunting, and gathering activities by the Sauk-Suiattle Indian Tribe, Swinomish Tribe, and the USIT that are rights-secured by the 1855 Treaty of Point Elliot. However, removal of these structures would result in greater adverse effects to the Skagit River and Newhalem Creek Hydroelectric Projects Historic District than would occur under the proposed action.”*

⁹ Mierendorf, Robert R. and Scott Schuyler "The Skagit River Gorge and Canyons, Whatcom County, Washington, 45WH450" National Register of Historic Places Determination of Eligibility. Upper Skagit Indian Tribe, Sedro-Woolley, WA, November 13, 2019.

The NPS strongly disagrees with the notion that an adverse effect to a locally significant resource, which is one of 58 contributing properties, would be greater than the adverse effect to the TCP 45WH450 with statewide significance, which is an entirely unique resource tied to a tribe's religion, origin story, cultural practices and identity.

The NPS requests that FERC select an outcome that would strengthen tribal treaty rights, ensure compliance with our tribal trust responsibilities, and meet our shared leadership's goals. Reaffirming tribal treaty-reserved rights, self-determination, and sovereignty has been the basis of policy building from the top down, including Executive Orders [12898](#), [14112](#) and [14096](#), [Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), [Memorandum on Uniform Standards for Tribal Consultation](#), [Presidential Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making](#), and Joint Secretarial Order [3403](#). The Department of the Interior, Department of Energy and other agencies have signed Memoranda of Understanding to affirm commitments to protect treaty rights and preserve Indigenous sacred sites. Examples include:

- The [Memorandum Of Understanding Regarding Interagency Coordination And Collaboration For The Protection Of Tribal Treaty Rights And Reserved Rights](#), commits the signatories to *"affirm our commitment to protect tribal treaty rights, reserved rights and similar tribal rights to natural and cultural resources."*
- The [Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites](#), commits the signatories to *"affirm their commitment to improve the protection of, and access to, Indigenous sacred sites through enhanced and improved interdepartmental coordination, collaboration, and action."*

Protecting treaty rights and preserving Indigenous sacred sites are priorities of NPS leadership and should be reflected in the EA's effects analysis and preferred alternative. The NPS's comments and selection of the Full Restoration Alternative in the Newhalem Surrender project are consistent with the above mentioned executive orders and memoranda. While recognizing FERC as an independent agency, the NPS encourages FERC to voluntarily adhere to these executive orders. FERC has equity goals defined in its equity plan¹⁰ and can further two actions that are directly relevant to the Newhalem Decommissioning Project: Strengthen Tribal Engagement and Consultation, and Ensure Hydropower Licensing Policies and Processes are Consistent with Environmental Justice. Working with our tribal partners, FERC and the NPS can uphold and protect tribal resources.

¹⁰ [Equity Action Plan | Federal Energy Regulatory Commission \(ferc.gov\)](#)

Table 2. Historic Built Environment Resources within the Newhalem Creek Hydroelectric Project Decommissioning Area. Table from Lentz and Tavel 2024 with minor changes.

Map ID	HPI Property ID	Property Name	Individually Eligible for NR	District Status DT-66	Partial Removal	Full Removal and Full Restoration Alternative
1	729310	Powerhouse	Not Eligible	Contributor (A and C)	Remain	Remove
2	729311	Headworks -Diversion dam -Sluiceway -Intake and rock shaft -Gatehouse -Footbridge	Not Eligible	Contributor (A and C)	Remove (N=5)	Remove (N=5)
3	729312	Power tunnel	Not Eligible	Contributor (A, B, and C)	Abandon	Abandon
4	729313	Penstock	Not Eligible	Contributor (A, B, and C)	Remain	Remove
7	729316	Newhalem Creek Bridge	Not Eligible	Contributor (A and C)	Remain	Remain
8	730063	Trail Network	Not Eligible	Contributor (A)	Remain	Remain

Table 3. Archeological Sites within a two-mile radius of Project. Table from Bush et al. 2024 with minor changes.

Site #	Author, Year	NRHP Eligibility	District Eligibility
45WH1029	Humphries 2017	Not Eligible (Criteria D)	Contributes to 45WH450*
45WH477	Forrest 1989b	Eligible	Contributes to 45WH450
45WH1101	Vasquez and Nelson 2021b	Not Eligible	
45WH1014	Johnson Humphries 2016a	Potentially Eligible	
45WH401	Forrest 1989a	Survey/Inventory	
45WH957	Rinck 2013	Potentially Eligible	Contributes to 45WH450

Site #	Author, Year	NRHP Eligibility	District Eligibility
45WH1107	Vasquez and Nelson 2021d	Not Eligible	
45WH899	Valentino 2011	Potentially Eligible	
45WH1015	Johnson Humphries 2016b	Potentially Eligible	
45WH1109	Vasquez and Nelson 2021e	Potentially Eligible	
45WH1100	Vasquez and Nelson 2021a	Not Eligible	
45SK230	Martin 1996a	Not Eligible	
45WH089	Weaver 1978	Potentially Eligible	
45WH81	Pint 1977	Not Eligible	
45WH1104	Vasquez 2021	Not Eligible	
45WH63	Grabert and Griffin 1975a	Potentially Eligible	
45WH495	Kennedy 1992c	Potentially Eligible	Contributes to 45WH450
45WH64	Grabert and Griffin 1975b	Determined eligible	Contributes to 45WH450
45WH516	Martin 1996b	Potentially Eligible	
TEMP-ERCI-952-1	Bush et al 2024	Recommended Not Eligible	
TEMP-ERCI-952-2	Bush et al 2024	Recommended Eligible (contributing)	
45WH476	Forrest 1989c	Potentially Eligible	Contributes to 45WH450
45WH400	Mierendorf 1988	Potentially Eligible	Contributes to 45WH450
45WH1102	Vasquez and Nelson 2021c	Not Eligible	
45WH490	Kennedy 1992a	Potentially Eligible	Contributes to 45WH450
45WH491	Kennedy 1992b	Potentially Eligible	Contributes to 45WH450
45WH923	Shantry 2012	Potentially Eligible	

Site #	Author, Year	NRHP Eligibility	District Eligibility
45WH475	Forrest 1989d	Potentially Eligible	Contributes to 45WH450
45WH184	Boersema 2021a	Eligible	
45WH699	Boersema 2021b	Not Eligible	
45WH698	Larrabee and Mierendorf 2004	Eligible	Contributes to 45WH450
45WH1111	Vasquez 2021a	Potentially Eligible	
45WH1098	Vasquez 2021b	Not Eligible	

*USIT is in the process of updating 45WH450 to include 45WH1029

Environmental Justice

American Indian tribes have been dispossessed of their lands and forcibly relocated to areas beyond the one-mile radius used to identify minority populations for environmental justice. The Newhalem Hydroelectric project was located within one mile of an Upper Skagit Indian Tribe village site in Newhalem (Upper Skagit Indian longhouse community daxwálib) (Collins 1974 pg17¹¹). Project effects to the Tribe's daxwálib community were described in SCL's 1990 TCP study for the Skagit hydro project (Blukis Onat 1990:93-94¹²); the ethnographer noted project impacts may have necessitated the relocation of a number of traditional properties including the major village and fishing location at Newhalem. Descendants of this village live within the Upper Skagit Indian Tribe and may also live in the Swinomish Indian Tribal Community or Sauk-Suiattle Indian Tribe.

¹¹Collins, June McCormick. 1974. Valley of the spirits: The Upper Skagit Indians of Western Washington. University of Washington Press, Seattle, Washington.

¹² Blukis Onat, Astrida R. 1990. Skagit Hydroelectric Project Relicensing Survey and Evaluation of Traditional Cultural Values, Properties, and Significance of the Project Area to Indian Tribes. Prepared for EBASCO Environmental and Seattle City Light.

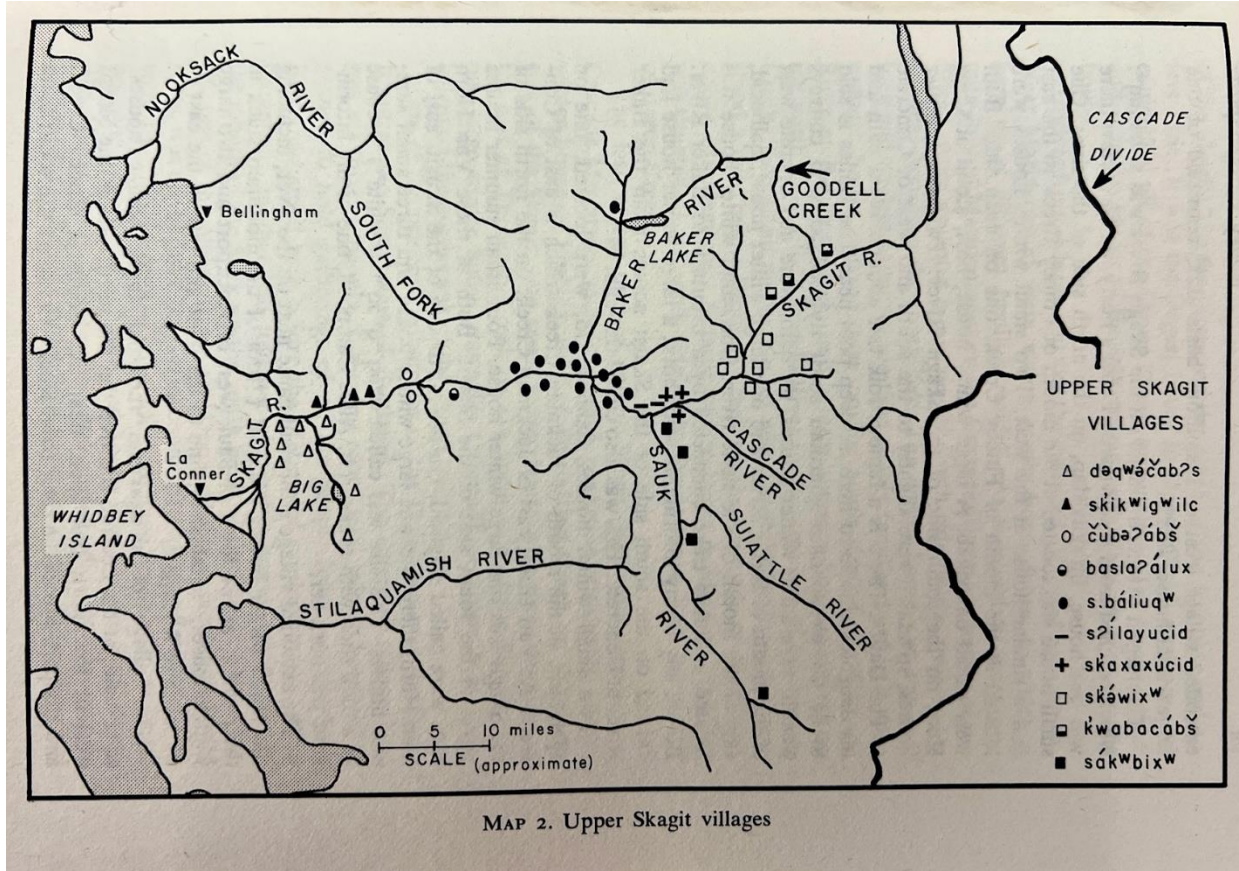


Figure 3. Map from Collins 1974 with location of Upper Skagit Indian Tribe village and longhouse east of the confluence of Goodell Creek and the Skagit River at the present day townsite of Newhalem, WA.

The NPS maintains that the Partial Removal Alternative will have a disproportionate effect upon Indian tribes whose traditional village was in Newhalem, and their voices should be given preference. The environmental justice analysis does not consider them. It is unlikely that the retention of historic-era buildings in the Partial Removal Alternative is benefitting them. The Full Restoration Alternative, which restores the natural environment, would likely benefit tribal communities, but consultation with them is needed to understand the effects fully. The Full Restoration Alternative would help enable the Upper Skagit Indian Tribe to reconnect with their cultural practices and religious ceremonies. Again, consultation with the Tribe will be necessary to understand the effects to this environmental justice group fully.

Recreation

In previous comments, the NPS recommended that the NEPA document evaluate the effects on the removing the road from the Rock Shelter trailhead to the powerhouse under the full removal alternative. After further evaluating the effects on cultural resources, environmental justice, and recreation, the NPS recommends retaining this road and trail, to facilitate easier tribal access for traditional practices and reduce effects on recreation.

Removing the road from the Rock Shelter trailhead to the powerhouse would still enable public access to the popular Newhalem area trails. The Trail of Cedars would still be accessible from the footbridge at Newhalem. The Rock Shelter Trail could be accessed from the east through Newhalem Campground. Removal of the road would impact visitors' ability to experience a loop trail.

Permit for Use of Lands Outside of the FERC Boundary

Because they will utilize NPS lands beyond the FERC boundary for removal activities under all action alternatives, SCL will need an NPS special use permit from North Cascades National Park Complex for temporary use of those lands during the construction activities. The park looks forward to working with SCL on the process of obtaining this permit and suggests that they initiate the process as soon as FERC issues the final EA and Surrender Order.

Enclosure 2 - NPS Laws and Policies

The NPS draws on the following key laws and policies when examining the Newhalem Surrender alternatives and ensuring the NPS lands are restored satisfactorily.

- [NOCA Enabling Legislation](#)
- [NPS Organic Act](#)
- [NPS 2006 Management Policies](#)

Key Laws Governing Park Management

Public Law 90-544: Enabling Legislation, Signed into law by President Lyndon Baines Johnson, October 2, 1968

Sec. 201. In order to provide for the public outdoor recreation use and enjoyment of portions of the Skagit River and Ross, Diablo, and Gorge Lakes, together with the surrounding lands, and for the conservation of the scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Ross Lake National Recreation Area (hereinafter referred to in this Act as the "recreation area"). The recreation area shall consist of the lands and waters within the area designated "Ross Lake National Recreation Area" on the map referred to in section 101 of this Act.

SEC. 401. The Secretary shall administer the park in accordance with the Act, of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), as amended and supplemented.

Sec. 402. (a) The Secretary shall administer the recreation areas in a manner which in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of renewable natural resources and the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment. In administering the recreation areas, the Secretary may utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith.

SEC. 505. Nothing in this Act shall be construed to supersede, repeal, modify, or impair the jurisdiction of the Federal Power Commission under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), in the recreation areas.

Organic Act of 1916

The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purposes of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1)

General Authorities Act of 1970 and the 1978 “Redwood amendment”

General Authorities Act of 1970 and Redwood Amendment of 1978: Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted above], to the common benefit of all the people of the United States. (16 USC 1a-1)

NPS Management Policies 2006

1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values

- The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment and applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.
- The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States...Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act.

1.4.4 The Prohibition on Impairment of Park Resources and Values

- While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

1.4.5 What Constitutes Impairment of Park Resources and Values

- The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.
An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or identified in the park’s general management plan or other relevant NPS planning documents as being of significance.
- If there would be an impairment, the action must not be approved.
- If it is determined that there is, or will be, an impairment, the decision-maker must take appropriate action, to the extent possible within the Service’s authorities and available resources, to eliminate the impairment. The action must eliminate the impairment as soon as

reasonably possible, taking into consideration the nature, duration, magnitude, and other characteristics of the impacts on park resources and values, as well as the requirements of the National Environmental Policy Act, National Historic Preservation Act, the Administrative Procedure Act, and other applicable laws.

1.4.7.1 Unacceptable Impacts

- The Service will do this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment. Park managers must not allow uses that would cause unacceptable impacts; they must evaluate existing or proposed uses and determine whether the associated impacts on park resources and values are acceptable.
- Therefore, for the purposes of these policies, unacceptable impacts are impacts that, individually or cumulatively, would be inconsistent with a park's purposes or values, or impede the attainment of a park's desired future conditions for natural and cultural resources as identified through the park's planning process, or create an unsafe or unhealthful environment for visitors or employees, or diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or unreasonably interfere with park programs or activities, or an appropriate use, or the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.

1.4.7.2 Improving Resource Conditions within the Parks

- The Service will also strive to ensure that park resources and values are passed on to future generations in a condition that is as good as, or better than, the conditions that exist today. In particular, the Service will strive to restore the integrity of park resources that have been damaged or compromised in the past.

1.5 Appropriate Use of the Parks

- When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant.

1.11.1 Government-to-Government Relationship

- This means that NPS officials will work directly with appropriate tribal government officials whenever plans or activities may directly or indirectly affect tribal interests, practices, and/or traditional use areas such as sacred sites.

4.1.5 Restoration of Natural Systems

- The Service will reestablish natural functions and processes in parks unless otherwise directed by Congress.
- Impacts on natural systems resulting from human disturbances include the introduction of exotic species; the contamination of air, water, and soil; changes to hydrologic patterns and sediment transport; the acceleration of erosion and sedimentation; and the disruption of natural processes. The Service will seek to return such disturbed areas to the natural conditions and processes characteristic of the ecological zone in which the damaged resources are situated. The Service will use the best available technology, within available resources, to restore the biological and physical components of these systems, accelerating both their recovery and the recovery of landscape and biological community structure and function. Efforts may include, for example removal of contaminants and nonhistoric structures or facilities restoration of abandoned mineral lands, abandoned or unauthorized roads, areas overgrazed by domestic

animals, or disrupted natural waterways and/or shoreline processes restoration of native plants and animals

4.4.2.4 Management of Natural Landscapes

- Landscape and vegetation conditions altered by human activity may be manipulated where the park management plan provides for restoring the lands to a natural condition. Management activities to restore human-altered landscapes may include, but are not restricted to removing constructed features, restoring natural topographic gradients, and revegetating with native park species on acquired inholdings and on sites from which previous development is being removed; restoring natural processes and conditions to areas disturbed by human activities such as fire suppression; rehabilitating areas disturbed by visitor use or by the removal of hazard trees; and maintaining open areas and meadows in situations in which they were formerly maintained by natural processes that now are altered by human activities.

4.9 Soundscape Management Park

- Natural soundscape resources encompass all the natural sounds that occur in parks, including the physical capacity for transmitting those natural sounds and the interrelationships among park natural sounds of different frequencies and volumes. Natural sounds occur within and beyond the range of sounds that humans can perceive, and they can be transmitted through air, water, or solid materials. The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks.

5.3.1 Protection and Preservation of Cultural Resources

- The National Park Service will employ the most effective concepts, techniques, and equipment to protect cultural resources against theft, fire, vandalism, overuse, deterioration, environmental impacts, and other threats without compromising the integrity of the resources.

5.3.5.2.6 Land Use and Ethnographic Value

- The variety and arrangement of cultural and natural features in a landscape often have sacred or other continuing importance in the ethnic histories and cultural vigor of associated peoples. These features and their past and present-day uses will be identified, and the beliefs, attitudes, practices, traditions, and values of traditionally associated peoples will be considered in any treatment decisions.

9.1.3.2 Revegetation and Landscaping

- The selection of plant materials and cultivation practices will be guided by the policies for management of plant materials in section 4.4 and the need for fire-resistant vegetation for defensible space. To the maximum extent possible, plantings will consist of species that are native to the park or that are historically appropriate for the period or event commemorated.
- Wherever practicable, soils and plants affected by construction will be salvaged for use in site restoration.

Enclosure 3 - Photographs of Newhalem Installations



Figure 1. Power poles, transmission lines, and underground transmission line vaults adjacent to the Skagit River.



Figure 2. Transformers and cement bollards adjacent to the Newhalem Powerhouse.



Figure 3. Electrical cables and conduit attached to penstock saddles and telephone line laying on the ground adjacent to the penstock.



Figure 4. Viewing platform constructed of treated lumber on the lower portion of the penstock.



Figure 5. Six-inch diameter PVC pipe adjacent to the penstock.



Figure 6. Telephone, circuit breaker, lights, and six-inch PVC pipe inside of the penstock tunnel. The elevated planks providing access and a small portion of the wood cradles are also visible.



Figure 7. Electrical conduit, lights, telephone line, and anchors in the penstock tunnel.



Figure 8. Drainage pipe near the steep slope adjacent to where the penstock exits the tunnel, minimal water flow is poorly dispersed.



Figure 9. Untreated log near the steep slope the Penstock is on above the Powerhouse



Figure 10. Untreated logs and concrete saddles on the steep slope just above the Powerhouse.



Figure 11. Penstock tunnel opening and rock retaining structure. Hazards including hazard trees and rock fall threaten the stability of the Penstock.



Figure 12. Potentially contaminated wood saddle underneath the penstock that will need to be replaced if penstock is left in place.



Figure 13. Cement retaining wall associated with the access road to the headworks.

Enclosure 4 - Photographs of SCL Hilfinker Wall Construction on the Newhalem Road Accessing the Headworks





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