



State of Washington
Department of Fish and Wildlife
Energy, Water, and Major Projects Division
P.O. Box 1100, La Conner, WA 98257-9612

May 13, 2024

FILED ELECTRONICALLY

Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

**RE: NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT
NEWHALEM CREEK HYDROELECTRIC PROJECT, P-2705-037**

Dear Acting Secretary Reese:

Enclosed for filing in the above-referenced proceedings are the recommendations and comments for the Environmental Assessment (EA) for the proposed Surrender of License and Decommissioning of the Newhalem Creek Hydroelectric Project (FERC No. 2705). The Washington State Department of Fish and Wildlife (WDFW) has filed these comments pursuant to Section 10(j) of the Federal Power Act (FPA), 16 U.S.C. § 803, as amended, and the Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. § 661 *et seq.* WDFW is an agency of the State of Washington (State) with jurisdiction over State fish, shellfish, and wildlife resources, and is charged with the duty of protecting, conserving, managing, and enhancing those resources.

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RCW 77.04.012. The decommissioning activities of the Newhalem Creek Hydroelectric Project (Project) may adversely impact the fish and wildlife resources of the State. WDFW therefore recommends that the Federal Energy Regulatory Commission (FERC) accept the following comments and recommendations for the EA to protect, mitigate, and enhance fish and wildlife resources affected by the decommissioning of the Project.

The Project (FERC No. 2705-037) resides in the upper watershed of the Skagit River in Whatcom County near Newhalem, Washington. Seattle City Light (SCL) has filed the Application for Surrender of License and Decommissioning Plan Documents with the FERC. With the Notice of Availability of EA, the FERC has initiated consultation with the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402.

The enclosed recommendations and comments on EA reflect the discussions, meetings, and review of the information SCL has made available, and communications with the other resource entities and SCL.

COMMENTS AND RECOMMENDATIONS

WDFW Supports for National Park Service Modifications to the Full Removal

Alternative: WDFW supports the recommendations by the National Park Service (NPS), the

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Upper Skagit Indian Tribe (USIT), and the Sauk-Suiattle Indian Tribe (SSIT) for the modifications to the Full Removal Alternative, hereafter called the Full Restoration Alternative.

The Full Restoration Alternative mostly increases the removal of project features as proposed in Full Removal Alternative.

The Full Restoration Alternative also removes:

- 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.

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The largest number of infrastructure removals would restore the most fish and wildlife habitat in the long term. Although SCL touts the small acreage of their proposed remaining infrastructure, the long linear nature of the penstocks and their supports have a much greater effect than a small rectangular area of impact. The remaining infrastructure impedes a fuller restoration of the area.

With the great reduction of old-growth stands and mature habitat in the area from the 2015 wildfire, SCL can conduct a more complete restoration and infrastructure removal with fewer impacts to habitat due to the great amount of early seral (recently disturbed) habitat. As a good steward of the land, SCL should initiate the full restoration process, before it surrenders the land back to the NPS. The NPS will likely manage much of the area for future mature forests. SCL's removal of most of the infrastructure would advance this process. The Federal Energy Regulatory Commission's regulations charge the utility that constructed the Project on lands of the United States, SCL, with the responsibility to restore the lands to a condition satisfactory to the landowner, NPS. 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."

Obtaining a Hydraulic Project Approval: WDFW recommends that SCL acquire a Hydraulic Project Approval (HPA) for all work within and near Newhalem Creek and the intermittent creek that serves as the tailrace. Washington State (State) law ([RCW 77.55](#)) requires parties planning hydraulic projects in or near State waters to acquire an HPA from the

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WDFW. This would include most marine and fresh waters. An HPA would ensure that the project proponent would construct a project in a manner that protects fish and its aquatic habitats. WDFW would recommend that SCL apply for an HPA during the consultation process before the construction of each specific restoration project.

Return of the Tailrace to a Natural Stream: WDFW supports SCL's removal of the fish tailrace barrier. WDFW also recommends that SCL restore the tailrace to a natural stream, through the removal of all concrete, rip rap, and other unnatural armoring.

The Ceasing of Maintenance to County Line Pond No. 3 for Salmon Releases: SCL states, "In response, City Light [SCL] states that it continues to occasionally conduct road and culvert maintenance as needed for County Line Pond No. 3, although Washington DFW [WDFW] has not used this facility in recent years. City Light [SCL] proposes to discontinue maintenance for County Line Pond No. 3, once the Newhalem Project license is surrendered." Frankly, WDFW does not agree with this statement. WDFW has released summer Chinook Salmon (*Oncorhynchus tshawytscha*) in County Line Pond No. 3 (Pond No. 3) for the last 30 years. WDFW uses Pond No. 3 for the release of an indicator stock, so this site represents a high priority release site and one that must remain consistent from year to year during the releases. In addition, WDFW may use this site to start a Chum Salmon (*Oncorhynchus keta*) volitional release program. In the last many years, the Skagit Chum Salmon population has steadily decreased in an alarming manner. WDFW highly recommends that SCL reconsider its position on the maintenance of the Pond No. 3 critical release site for Skagit salmon populations.

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WDFW would like to continue the use of this release site and would hope that SCL would continue to maintain access to Pond No. 3 on its property to help Skagit salmon populations.

Mitigation for Power Tunnel: WDFW would support SCL's construction of a gate across the power tunnel entrance. WDFW would recommend that SCL erect a gate that allows access to bats.

Invasive Plant Management Plan: SCL proposed five years of monitoring before ceasing invasive plant maintenance. SCL would prepare an annual monitoring report that would document completed maintenance, identify future maintenance needs, and provide digital images of restoration areas. FERC recommended three years. WDFW recommends that SCL should base the length of monitoring on a target of non-native or noxious weed percentage of cover. SCL should create contingency plans to implement additional actions, if it does not successfully meet non-native or noxious weed coverage targets by time deadlines. WDFW recommends that SCL create targets of non-native or noxious weed percentage coverage on each site, for example, <25% after one year and <5% after three years. SCL should re-treat, plant native plant species, and monitor again in one or two growing seasons, wherever it does not meet these targets. When SCL meets the non-native or noxious weed vegetative percentage cover at deadlines, it can quit monitoring. In the end, the NPS would approve of the restoration of the land and the targets for success. SCL should consult with WDFW during the creation of the management plans with approval by the NPS.

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Sediment and Erosion Control Plan: WDFW supports NPS comments on the Sediment and Erosion Plan and the comments of the slow movement of sediment in Newhalem Creek that would affect the monitoring timing. Dube (2021) 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.” WDFW supports the NPS’ proposal that the monitoring would continue until at least two flood events, one over 1,500 cfs, a 2-year flood (Dube 2021), and one flood event over 3,200 cfs, a 5-year flood (Dube 2021), have occurred in Newhalem Creek over three separate years. WDFW agrees with FERC that monitoring would 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.”

Special Status Wildlife (and their habitat): Special Status Wildlife should include the State of Washington’s Priority Habitat and Species (PHS) list. SCL has excluded this, along with Table 5 information in the same section. WDFW recommends that SCL complete the effects analysis of the decommissioning by the inclusion of the analysis of the Priority Species and their Priority Habitat. SCL should also include Table 5 heading, with a table of information.

WDFW looks forward to additional review of the entire project during the decommissioning process and before our Area Habitat Biologist issues an HPA. SCL should feel free to contact

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me with any questions, especially to provide additional information on WDFW's comments and recommendations. Please do not hesitate to call me at (360) 466-9245.

Sincerely,



Brock Applegate

Hydro Power Coordinator and FERC Projects Mitigation Biologist

Cc: Benjamin Blank, WDFW Olympia
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Literature Cited

Dubé, K.V. 2021. Newhalem Dam decommissioning geomorphology considerations draft report, Newhalem Creek Hydroelectric Project FERC No. 2705. Prepared by Watershed GeoDynamics. October. Filed with FERC on December 12, 2022.

Available at:

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20221212-5191

[Attachment AIR Request #8a)].

Document Content(s)

EA Comment Letter1.pdf.....1