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May 21, 2024

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

Re: Environmental Assessment for Application to Surrender License – Newhalem Creek Hydroelectric Project, FERC NO. 2705-037

The Upper Skagit Indian Tribe (USIT) hereby submits these comments to the Federal Energy Regulatory Commission's (FERC) March 29, 2024 Environmental Assessment for Application to Surrender License (EA) for Seattle City Light's (SCL) Newhalem Creek Hydroelectric Project, FERC Project No. 2705-037 (Project).

The USIT appreciates SCL's continued engagement during development of the decommission plan. Unfortunately, SCL and FERC have not proposed an action the USIT can support. In comments to the Application for Surrender, the USIT explained the significance of the area in and around the Project. The USIT reiterates these comments, maintaining that Project decommissioning provides a unique opportunity to restore the landscape to a more natural state and full removal is necessary to adequately protect the USIT's cultural resources and treaty rights.

Comments submitted by the National Park Service (NPS), as federal supervisor of the lands upon which the Project has been constructed, are particularly relevant, per 18 CFR § 6.2. The NPS has determined the only acceptable alternative is a modified "Full Removal Alternative," which would substantially achieve the USIT's desire for restoration of the Project area.

The USIT requests that FERC obligate licensee SCL to remove all Project works, including the penstock, penstock saddles, powerhouse and transmission lines. Following are more detailed comments regarding full removal and the proposed decommission plan.

Respectfully submitted,

Marilyn Scott
Chairwoman, Upper Skagit Indian Tribe

Cc: service list

It's good to see that the Environment Assessment incorporates some earlier comments the USIT submitted. We'd like to make some additional responses regarding particular aspects of the Environmental Assessment and the proposed decommission plan.

6.3.1.2 Environmental Effects

Streambed Profile and Sediment Mobilization

We agree with the determination that no additional grade control is necessary to arrest head cutting above the diversion dam due to the boulder/bedrock morphology of the creek bed and gradient.

Sediment Mobilization will have a short-term impact to pools below the diversion dam, but it is expected that natural conditions will be restored once natural flows and geomorphic processes are restored.

We agree that three years of monitoring should take place to identify and address fish passage barriers resulting from excess sediment movement after dam removal. We request that if removal efforts are necessary, the USIT will be consulted regarding the methods and extent of removal to minimize impacts that could occur from the work.

Effect of Rock Scaling and Road Decommissioning on Slope Stability

We generally support the road decommissioning plan that has been presented, including the removal of culverts, restoring natural drainage pathways, out sloping the road bed, water bars where relevant, etc. Road improvements during removal of the diversion dam and the plan to scale material for safety are acceptable. After removal of the diversion dam, full and proper decommissioning of the road should include complete removal of any walls that are currently supporting the road along the section being decommissioned. There has been extended conversation especially regarding the merits of removing or leaving the Hilfiker wall supporting the road across the debris slide. Leaving the wall in place will cause non-native material to persist on site and eventually move into the creek. Introduction of non-native material constitutes an adverse effect to the historic character of the Tribe's TCP District (45WH450) through loss of integrity of setting, materials, feeling, and association. The adverse effect is exacerbated in streams with introduced non-native materials and road debris or contaminated with oil or petroleum products (from decades of vehicular traffic) because such streams are viewed as impure and unsuitable for the traditional religious practice of ceremonial bathing in pure water. Removing the wall will be easier in its current condition and will avoid deferring the burden to future managers to mitigate the environmental degradation and impact to cultural resources.

The presence of the wall creates an unusual balance of gradients and forces that will continue to evolve over time into an increasingly unstable condition. Some efforts can be made to avoid loading the wall with additional debris by sloping the road surface downslope, however, the wall presents an unnaturally steep condition that may itself fail once internal reinforcements have become too weak to support the structure. Over time, portions of road and backfill material along with any remaining steel will erode into the creek. Observations that support this concern include undermining at the base of the wall, tension cracks forming on the outboard side of the wall and evidence of slope creep downhill of the wall (Vavrek 2021). It is unlikely that colluvium along the base will provide lasting support or bury the wall because it would have to maintain a slope much greater than the native slope to do so. More likely, any accumulation at the base of the wall will contribute to slope motion, causing additional strain to the wall.

The dominant mode of instability at this site is likely debris fall as freeze-thaw cycles loosen material and fines are gradually eroded away from the slide's head and lateral walls during the rainy season. The natural cohesion of the material within the slide area is stable where it is in place. The matrix supported material holds together well enough to form a steep erosional surface, around 40-45^{o}, extending out of the debris cone that has accumulated on the road. Around the perimeter walls of the slide, the slope is up to 70^{o} (Vavrek 2021). The slope holding ability is further demonstrated by photos of the original construction that show a steep side cut across the slide that was safely maintained during operations.

Native material removed from the site should be stored somewhere stable but can also be used appropriately in decommissioning and restoration activities. As much as possible, it can be used to backfill the void caused by removal of the wall.

Tunnel Leakage

The penstock should be removed due to its adverse effect to the Tribe's TCP District (45WH450) and the ongoing maintenance that will be required. We agree that building a road to remove the penstocks will be environmentally impactful, however, the penstocks were emplaced without the use of a road and there are several options to remove them without the need to build a new road. These options need to be considered more seriously.

The conveyance of water from the tunnel is an issue that needs to be addressed. The Tribe's preference is to prevent leakage within the tunnel and to know more about the leakage to assess if prevention is feasible. Other mitigation that could be acceptable includes finding a maintenance- free way to disperse water safely onto the slope without causing excessive erosion or directing it into existing drainage channels. We agree that the appropriate mitigation will depend on the flow magnitude.

Disturbance of Soil Containing Contaminants

Where there is potential for soil contamination resulting from the project, the nature and extent of contamination should be evaluated prior to any deconstruction or earth moving activities. Any contaminated soils associated with the project should be removed and the spread of contamination should be addressed rather than leaving contaminants in the soil for future generations.

Cultural History Overview
Prehistoric and Ethnographic Background

Page 55, end of 1st full paragraph, the last sentence ending with: "…and at a pass through the Cascade Mountains." It is important that the pass be identified by its name, "Cascade Pass" due to its proximity to the project area at the head of an Upper Skagit River tributary, demonstrating both a geographic and cultural affiliation with the project vicinity over the last 10,000 to 8,000 years.

Page 56, 1st two sentences in the 1st full paragraph: As written, the sentences are ambiguous as to the ethnographic affiliation of the people and villages being referred to. It is important to the USIT that the project area be recognized as affiliated with its traditional territory at Newhalem. Lacking this attribution, the narrative mistakenly treats all Skagit tribes and bands as if they shared the same geography, identify, history, villages, and family stories, which the ethnographic record clearly shows they do not.

Page 56, 2nd sentence in the 1st full paragraph: the sentence begins with "An Upper Skagit village…" but the USIT notes that this is inconsistent with the remainder of the draft EA, wherein the names of the tribes are used. In the Tribe's view, the sentence should begin with "A village affiliated with the USIT…" or "An Upper Skagit Indian village…", because the ethnographic record of elder interview testimony affiliates the bands and villages furthest up-river with the USIT (Blukis-Onat 1990, Collins 1974, Malone 2013, Miller and Angelbeck 2006, Miller et al. 2019, Sampson 1972, Smith 1988; note this is a partial listing of sources for this information). This affiliation is particularly true for the most up-river of all the Skagit River villages, dax^{w}álib, today's Newhalem.

Page 56, 3rd sentence in the 1st full paragraph: The mention of two trails is confusing, given that a main trail followed the Skagit River but it connected to numerous side trails following ridgelines and tributary streams. Therefore, it's unclear what winter villages are being referred to here: does "northern" refer to First Nation groups residing in southern British Columbia to the north? The phrasing might also be interpreted to mean that trails were one-way, which we know was not the case. In any case, this is an inaccurate representation of the actual travel routes that traditionally existed in the project area (trails and travel routes are described in Blukis-Onat 1990, Mierendorf 1986, Miller et al. 2019).

Page 56, last sentence of the 1st full paragraph, that begins with "According to Seattle City Light's 1992 FERC license application for the Project, no archaeological evidence…." This is factually incorrect for several reasons. Since 1975 archaeological sites have been recorded in the project vicinity, beginning with site 45WH64, a fishing site at Goodell Cr. and several others that the surveyor (Grabert 1975) attributed to the Upper Skagit Indian village described by ethnographer June Collins (1974); a subsequent survey was conducted in 1984 that confirmed the presence of the sites. The results of these surveys were reviewed in a publicly-available report (Mierendorf 1986) following its release by the NPS, well-before SCL's license application in 1992. In 1991, NPS excavations at the Goodell Cr. Site recovered artifacts associated with salmon bones from intact alluvial deposits buried two meters deep and radiocarbon dated to over 600 years old. The site was subsequently assessed for significance and documented as meeting National Register eligibility criteria (Mierendorf 1998). In the mid-1990s NPS archaeologists investigated a rock shelter located in the project area, which uncovered artifacts associated with mountain goat bones that were radiocarbon dated to 1500 years old; the National Register eligibility of the site was documented in 1997 (Mierendorf 1997). More recently, archaeological studies in Newhalem, specifically, the monitoring of SCL's remodeling of Gorge Inn in Newhalem, revealed artifacts associated with the village remains, which are now recorded as archaeological site 45WH497 (Early et al. 2014). These sites and others too numerous to mention are listed as contributing resources to the USIT's TCP District (45WH450) (Upper Skagit Indian Tribe 2019).

What is clear today, and was clear in 1992, is that the vicinity of Newhalem, on both sides of the Skagit River, and along the lower reaches of its tributaries of Goodell and Newhalem Creeks, is an archaeologically sensitive area due to a high probability of encountering archaeological remains. For the above reasons, the USIT disputes the sentence's claim that cultural remains associated with the village have been eroded and washed downstream. That false claim is contradicted by the results decades of local archaeological research.

Historic Background

Page 56, 1st paragraph under *Historic Background*. This paragraph ignores the transition between the Tribe's occupancy of its historic ethnographic village, dax^{w}álib, and SCL's subsequent occupancy of the village. What happened to the Tribe's village during this historic transition period? No answer to this question is provided in the history of project development. However, an answer to this question was touched on by SCL's consulting ethnographer, Dr. Blukis-Onat, who made clear that the Upper Skagit Indian Tribe lost its traditional village to SCL's project. In her 1990 TCP study submitted to FERC in support the current FERC-553 license, she noted that "..project impacts may have necessitated the relocation of a number of traditional properties. One such property, directly impacted by project construction, is the major village and fishing location at Newhalem. It is apparent that the Upper Skagit have had to relocate their habitation base from this important location." (Blukis-Onat 1990: 93-94).

Identified Cultural Resources
Archaeological Resources

Page 57, 2nd full paragraph: acknowledges that decommissioning could disturb unknown archaeological sites and recommends that SCL consult with the USIT to establish a CRMMP to mitigate any adverse effects to archaeological sites. To date, the USIT has not been approached by SCL for the purpose of establishing a CRMMP.

6.3.6.2 Environmental Effects
Effects of Partial Decommissioning on Archaeological and Built Resources and Traditional Cultural Properties

Page 58, 1st full paragraph: The USIT strongly disputes the claim made in here that the TCP and other historic properties will lose federal protections afforded under the NHPA; in fact, federal protections under the NHPA will continue under the ongoing administrative jurisdiction of the NPS.

7.3 Finding of No Significant Impact

Page 69, ; last paragraph: Consistent with the Tribe's support for the Full Removal Alternative, the USIT has proposed to the NPS and the WA SHIPO that adverse effects to SCL's historic district DT-66 be appropriately mitigated through a program of education, outreach, and interpretation. These are policies and actions that SCL has supported for 100 years, and the Newhalem Cr. Project 2705-037 built environment is not required to achieve this goal. For this reason, the USIT believes that a CRMMP is unnecessary insofar as any historic properties in the project area remain protected under provisions of the NHPA by their location on lands administered under jurisdiction of the NPS, and by FERC's authority under the Federal Power Act to license the FERC-553 project area.

APPENDIX C: TABLES
Table 9. Comparison of Effects (Source: Staff).

Page C-12, Table 9, the first row: See comment 9 above, it is requested that Table 9 be corrected to reflect that there will be no loss of federal protections, given that such will continue under NPS administrative jurisdiction.

References Cited

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DECLARATION OF SERVICE

Seattle City Light
Newhalem Creek Hydroelectric Project (P-2705-037)

I, Tiffany Poovaiah, declare that I today served the attached "Upper Skagit Indian Tribe's Comments on the Federal Energy Regulatory Commission's March 29, 2024 Environmental Assessment for Application to Surrender License," by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.

Dated: May 24, 2024

By:

_____

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