



# Skagit County Board of Commissioners

Ron Wesen, First District

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September 15, 2020

**TO: Federal Regulatory Commission (FERC) by e-filing only**

**RE: Skagit River Hydroelectric Project (FERC No. 553-235)  
Comments on Scoping Document 1**

## **I. Introduction and Endorsement of Study Requests.**

This comment letter pertains to the ongoing relicensing of the Skagit River Hydroelectric Project, FERC No. 553-235, owned by the City of Seattle (the “**Project**”).

We have a strong relationship with the tribal governments located within Skagit County. The Upper Skagit Indian Tribe (“**Upper Skagit**”) is requesting a comprehensive fish passage study, along with a number of other study requests relevant to hydrology, geomorphology, riverine habitat, and instream flows. We have fully participated in the various aspects of the relicensing process with Seattle City Light (“**City**”), and have furnished input that Upper Skagit has taken into consideration. We stand with Upper Skagit, and endorse their study requests.

We also endorse and support the Flood Storage Timing Study Request submitted by the Skagit Dike District Partnership (“**SDDP**”) and the Skagit Drainage and Irrigation District Consortium (“**SDIDC**”), organizations that taken together represent the vast majority of diking, drainage and irrigation districts within Skagit County, which, among other things, protect the population and economic centers on the Skagit Delta from flood risk. By providing trend analysis additive to the City’s proposed Operational Model Study Plan, the Flood Storage Timing Study Request will help these districts anticipate impacts that climate change poses to the Project dams’ operational capacity during flood events.

## **II. Summary of Comments.**

To summarize our comments:

- Dam Failure Early Warning System. The existing dam failure early warning system in Eastern Skagit County is inadequate, relying largely on a continuous ringing of the local fire district’s sirens, which ring numerous times a day on most days for other reasons, inuring citizens to an actual alert of potential dam failure. To the extent not accomplished voluntarily, the City should be required to install a more comprehensive and effective dam failure early warning system in Eastern Skagit County. This should be coordinated with the early warning system that Puget Sound Energy installed as a FERC license condition for its dams on the Baker River. To that end, we are submitting a study request that seeks to analyze the necessary attributes of a safe and effective dam failure early warning system in Eastern Skagit County.
- City Mitigation Lands. Existing and new mitigation lands within the Project area and the County, which the City has taken off the local tax rolls pursuant to a state law tax exemption for municipal entities, are and will continue to shift the property tax burden to a decreasing number of properties, as well as creating impacts on local Skagit government arising from inadequate management of the City Mitigation Lands. This should be addressed through better management protocols and payment

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in lieu of taxes to local taxing districts. Because the Skagit County Auditor and other Skagit County agencies are the repositories of necessary data regarding this issue, we do not intend to present it as a formal study request, but rather wish to identify the issue to FERC and the City for early discussion and resolution.

- Holistic River System Analysis and Channel Migration Planning. Taken holistically, the City Mitigation Lands as well as the implications of a comprehensive fish passage study invoke significant change to system hydrology, instream flows, riverine habitat and assumptions about channel migration on the mainstem Skagit, which have had and will continue to have significant impacts on utilities, roads, infrastructure, and local land use plans required by state law, including the County's Comprehensive Plan and Shoreline Management Plan, which, among other things, envision the preservation of the community's Agricultural land base and farming economy. Appropriately addressing these concerns requires comprehensive analysis of the Project's impacts on the Skagit River, *including current and planned future mitigation activities*, beginning with the Project dams' impact on fish passage downstream to the Skagit River's terminus, including meaningful analysis of climate change-driven impacts that we are likely to experience. We believe that this can facilitate the creation of an agreed-upon Ecological Corridor, which can in turn be adopted into the County's Comprehensive Plan and Shoreline Management Plan in the form of a Channel Migration Zone ("CMZ") map. We request that FERC consider this request in reviewing study requests submitted by Upper Skagit and others, by ensuring that all study requests are appropriate in scope.

### III. Discussion Regarding Mitigation Lands, Channel Migration, and Comprehensive Planning.

#### A. Background Facts.

Skagit County is the government of general jurisdiction in nearly the entirety of the terrestrial land base downstream of the Skagit Project.<sup>1</sup> Together with our junior taxing districts, we are legally responsible for providing roads, bridges, public schools, law enforcement, flood control, diking, drainage, fire protection, and a wide range of other essential services and infrastructure throughout Skagit County.

In addition, we are legally required by state law to provide coordinated long-range land use planning, in the form of a state law-required and approved Growth Management Act ("**GMA**") Comprehensive Plan<sup>2</sup> and Shoreline Management Plan.<sup>3</sup>

A central focus of Skagit County's Comprehensive Plan since its initial adoption in 1960 has been the preservation of our agricultural land base and farming economy. Temperate, well-watered and alluvial, the Skagit is regarded as some of the world's richest soil. Skagit Agriculture represents approximately a third of our county's economy, and agricultural tourism is enjoyed by many tens of thousands of visitors each year, a significant number of whom come from nearby urban areas such as Seattle to visit our small working farms, buy fresh local produce, and the like. With major climate impacts to the viability of arable land predicted through much of the United States, we believe that planning for the continued existence of a robust agricultural economy in the Skagit is a matter of regional food security.

<sup>1</sup> A portion of the Skagit River mainstem reach between Gorge Dam and the town of Marblemount lies within Whatcom County, our neighboring county to the north.

<sup>2</sup> RCW Chapter 36.70A

<sup>3</sup> RCW Chapter 90.58

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As with most river valleys in the mountainous Pacific Northwest, the Skagit is highly geologically active. At various points throughout geological history, the Skagit River has meandered from valley wall-to-valley wall, throughout the Skagit's entire length, an historic channel migration zone that includes, among other things, State Highway 20 (the primary route to the Skagit Project dams); State Highway 530 (a secondary route to the dams); and a large number of primary and secondary Skagit County roads and associated bridges, culverts and other infrastructure. This area also includes a railroad corridor taken from the federal government into trust by Skagit County for the purposes of a public trail that runs near the Skagit River for much of the Middle Skagit mainstem reach, done pursuant to a rail banking instrument containing the explicit condition that the County will keep the rail corridor in condition to be used for potential future rail and utility usage, presenting a significant limit to the existing river channel's northward movement.

At the same time, we acknowledge, as a nation, our perpetual, treaty-based obligation to ensure that harvestable numbers of salmon and steelhead return to the Skagit River ecosystem. While there are many causes to attribute, the fact that salmon and steelhead numbers have almost uniformly declined in the Skagit since the 1995 Project relicensing render it difficult to muster a high level of enthusiasm for the same approach pursued over the last 25 years.

Regardless of the balance between hatchery production and wild salmon recovery pursued by the co-managers, we expect the burden of habitat improvement to be carried equitably and cooperatively by the City.

Taking all of the foregoing into consideration, a continued human presence in the Skagit Valley necessarily requires that we make careful, rational decisions, informed by credible and as comprehensive science as we can obtain, as to which infrastructure, roads, and areas of land we as a community of governments intend to defend from natural channel migration processes, and which areas we do not.

Under the Federal Power Act, analysis of the dams' impact on fish passage is explicitly identified as a requirement in an effort to ensure harvestable numbers of salmon pursuant to the treaties.<sup>4</sup> But despite the Federal Power Act's clear requirement, fish passage was not so much as studied in the course of the previous 1995 relicensing.

Instead, the principal mitigation under the 1995 relicensing was the City's agreement to purchase areas of land within Skagit County downstream of the Skagit Project (hereinafter, the "**City Mitigation Lands**"). To date, the City has acquired some 13,738 acres within Skagit County, some of which is farmland converted to mitigation use. Some of these lands have been defined as lying within the Project Boundary by the City, and some lands are not.

It should be noted that most of the physical Project facilities other than transmission lines are *not* within Skagit County, but rather are in Whatcom County, meaning that most of the 13,738 acres purchased by Seattle City Light within Skagit County are not directly related to the operation of the dam for electrical power purposes, but rather arise from City land acquisitions and related activities within Skagit County to mitigate for dam operations, pursuant to the 1995 license.

The intent of this letter is to address all 13,738 acres within Skagit County under City ownership, regardless of the City's own characterization of these lands for the purposes of the present relicensing.

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<sup>4</sup> 16 U.S.C. § 803(j).

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**B. Impacts to Tax Base and Local Government Funding Arising From City Mitigation Lands.**

With respect to the City Mitigation Lands, the City has availed itself of the state law exemption from local property tax available to government entities, removing its 13,738 acres within Skagit County from the tax rolls, creating a tax burden shift to the remaining properties in the area, a tax shift of over \$3.2 million thus far.

To provide an example of the significance of this tax shift, consider Fire Protection District No. 19, one of the geographically largest and most rugged fire districts in the State of Washington, which encompasses much of Eastern Skagit County. Its volunteer firefighters routinely respond to accidents and emergencies arising from City Light employees and guests who reside here, and tourists travelling to or from City Light facilities, as well as participating in wildland firefighting. Funded largely by ad valorem property tax assessment, Fire Protection District No. 19 has only one fire engine of dubious reliability, and its volunteers must frequently resort to paying for fuel and personal protective equipment from their own pocket. This has a direct nexus to the Project and its mitigation activities, and is not a satisfactory state of affairs.

The City Mitigation Lands have themselves created a wide range of problems for our community, such as the proliferation of noxious and invasive weeds, illegal garbage dumping, illegal drug activity, and trespassing on private lands through use of the City Mitigation Lands – issues and problems that local government must deal with at local taxpayer expense, drawing on a tax base that the City's activities are steadily degrading.

**C. City Mitigation Acquisitions and Objectives Fail to Consider Comprehensive Plans.**

While the City's April 2020 Pre-Application Document (Section 6) discusses the large number of other comprehensive plans the City intends to consider, our state law-required and state-approved Comprehensive Plan and Shoreline Management Plan receive no mention whatsoever, despite being the comprehensive plans most highly impacted by the City's mitigation plans and related activities pursuant to the license.

Particularly problematic is the fact that some of the City land acquisitions and related mitigation projects involve explicit or implicit plans that go far beyond facilitation of natural processes, seeking to actively re-direct streamflow and meander in various ways without adequately considering impacts outside the specific parcels on which mitigation activities are pursued – all of which is being carried out by the City, a distant municipal government, with no apparent concern for our state law-required land use comprehensive planning.

At a practical level, this translates to inadequate coordination and consideration for the resultant impacts of City mitigation activities on utilities, roads, agricultural use of the alluvial land base as our Comprehensive Plan envisions, and other aspects of the human environment that are the subject of our comprehensive planning.

In addition, without consulting Skagit County government, the City, together with the State Department of Ecology, has been actively involved in furnishing water rights for selected areas of the Skagit Valley downstream of the Project dams, thereby incentivizing new residential growth in the same areas that the City is pursuing mitigation activities and land acquisitions, which are also the same areas our state law-required Comprehensive Plan seeks to discourage new

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residential growth in favor of natural resource activity.<sup>5</sup> Yet at the same, the City has expressed resistance to helping meet the water needs of Skagit Agriculture, which, due to defects in earlier state-level water planning processes, is presently unable to access the relatively small amount of water, at a point of withdrawal low in the Skagit River mainstem, such as would be needed to ensure future viability for Agriculture in the face of climate change.

This kind of uncoordinated, unplanned activity at an ecosystem scale is exactly what our State Growth Management Act was meant to prevent:

The legislature finds that uncoordinated and unplanned land use, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.<sup>6</sup>

From our perspective, continued failure to address these concerns would represent a major shortcoming in any licensing or related NEPA process. We believe these concerns must be dealt with in the context of the present relicensing, beginning with the scope of the study requests presented by the Upper Skagit Indian Tribe and others.

#### **D. Specific Requests Related To City Mitigation Lands.**

As to the existing 13,738 acres of City Mitigation Lands within Skagit County, we believe that specific management protocols must be included in any new license to reduce the ongoing problems and impacts described above, in addition to payment of \$3,147,256.18<sup>7</sup> in lieu of taxes to local junior taxing districts such as Concrete School District and Fire Protection District No. 19 as necessary to compensate for the prior impact to the local tax base.

We are not completely opposed to new City Mitigation Lands acquisition in appropriate instances, but believe that any new mitigation lands acquisition should (a) generally be limited to lands adjacent to the Skagit River and its tributaries that are clearly at risk due to natural channel migration patterns; (b) should be limited to activities that facilitate natural processes rather than projects that envision active modification of channel migration and hydrology; (c) involve payment in lieu of taxes to local junior taxing districts to the extent such lands have been or will be removed from local tax rolls; and (d) must include management protocols to minimize the various problems arising from the City Mitigation Lands that we have experienced over the past 25 years since the 1995 relicensing.

As such, we join Upper Skagit in requesting a comprehensive fish passage study, as well as endorsing other studies sought by Upper Skagit that will consider geomorphology, riverine habitat, hydrology, and instream flows. We are confident in the scientific expertise and leadership that Upper Skagit has brought to bear on this issue, and stand with Upper Skagit in their effort to seek holistic analysis of the Project's impacts on the Skagit ecosystem we treasure and share.

<sup>5</sup> See, "Seattle City Light Agrees To Provide Water To Mitigate Wells," Seattle Times, May 18, 2019, <https://www.seattletimes.com/seattle-news/seattle-city-light-agrees-to-provide-water-to-mitigate-wells/> (last visited September 11, 2020).

<sup>6</sup> RCW 36.70A.010.

<sup>7</sup> This amount is current as of May 2020, and will be updated as discussions proceed.

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From our perspective, the scope of the studies requested by Upper Skagit and others must include the entire length of the Skagit River, which is necessary and proper given the inextricably intertwined impacts arising from City mitigation activities as well as changes to basic assumptions about instream flows, hydrology and natural processes that the current Skagit relicensing now appears likely to invoke.

We believe that the product of a holistic study will help inform a potential "Ecological Corridor" concept, which can be adopted into a regulatory Channel Migration Zone map as part of our state law-required Shoreline Master Plan and GMA Comprehensive Plan. In our view, this approach will create a new pattern language of cooperation and coordination over the long term between the City, tribes and local government.

These issues must be addressed in the socioeconomic component of the Project NEPA analysis if not resolved prior through direct settlement discussion.


Thank you for considering our input on this matter. We request to be made a formal party of record to this action, and be included on all communications relevant to the present relicensing.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**



Ron Wesen, Chair



Kenneth A. Dahlstedt, Commissioner



Lisa Janicki, Commissioner

cc: Tribal Council, Upper Skagit Indian Tribe  
Tribal Senate, Swinomish Indian Tribal Community  
Tribal Council, Sauk-Suiattle Indian Tribe  
City Council, City of Seattle