



Skagit No Name Slough Jeopardy BiOP and other related topics

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Welcome to the Skagit

- Yes – we have a baseline problem.....
we also have some political problems



Image: Marlin Greene, One Earth Images

Overview of the Dike 12 Project



Existing site conditions – essentially unchanged for over 120 years

- 60-ft feet of shoreline temporarily disturbed
- Dike replaced to the original footprint
- Replace 3 existing 48-inch pipes & 1 existing 32-inch pipe
- Replacement of about 5 truck loads of rip rap
- No critical habitat mapped upstream of the tidegate

Proposed finished drainage system



Example of NMFS Analysis

Head for the 8,000 acres of eel grass in Padilla Bay?

Swim back toward mudflats, tidegate and land



Juvenile chinook rear in natal estuary tidal marsh

Swim 11-miles through salty Swinomish Channel

Swim out to sea to avoid the McGlinn Jetty fish barrier

Juvenile chinook migrate out of the Skagit River



Photos courtesy of marinas.com downloaded via Bing.



Where are we now? ESA Coverage

- ❖ District 12 Appealed Jeopardy Decision
 - NMFS used a “baseline jeopardy”
 - NMFS reversed several previous decisions
 - BiOp contains numerous irreversible errors, internally inconsistent.
 - Shifts the 2005 recovery plan habitat restoration goals (voluntary) to the districts mitigation is at least 10 x more than avg. project cost

- ❖ U.S. District Court for the Western District of Washington ruled in favor of NMFS

- ❖ Dike 12 filed an appeal with the 9th Circuit Court
 - Swinomish have intervened
 - NMFS has agreed to mediate – mediation began in late July
 - Briefing scheduled for early January unless we ask for an extension

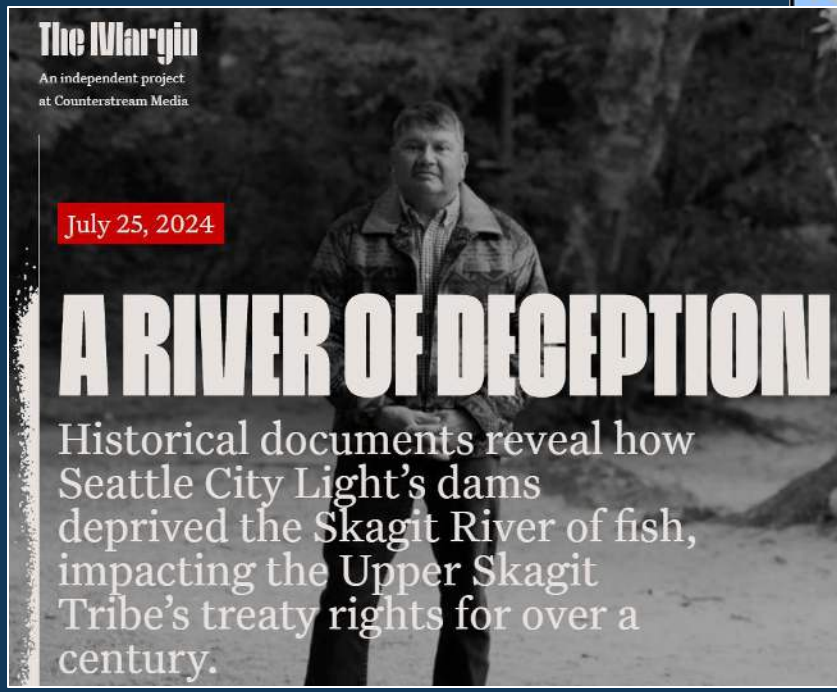
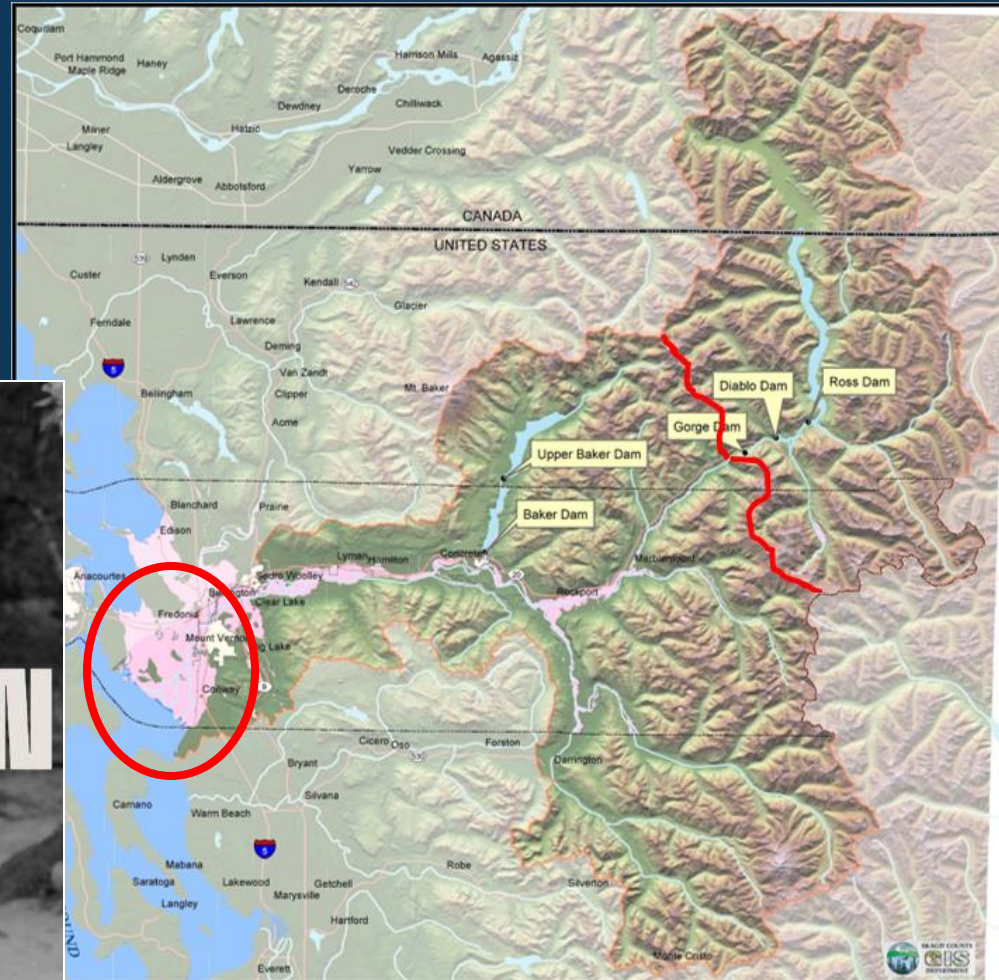
- ❖ Still working to have the 2022 MOU rescinded

- ❖ Draft ESA Rule Published - Comment period closes 12/22/2025

Our political problems started in the 1920s

SCL begins Construction

- ❖ SCL dams cut off 35% of the watershed
- ❖ SCL dams block access for salmon
- ❖ 70 miles upstream of the estuary



Our political problems start in the 1920s

April 6, 1921 SCL Letter to USFS

A letter written by SCL to the United States Forest Service acknowledging its dams blocked anadromous fish.



This letter acknowledges that SCL knew its dams blocked anadromous fish migration and therefore was required to build fish passage or a hatchery. SCL has since denied its dams blocked these fish and has evaded fish passage for a century. This letter to USFS was in SCL's possession and yet was left out of SCL's 1988 Original Impacts Report.

1921 4 6 SCL Udden to USFS Cecil - fishway in lieu of hatchery at Goodell Creek IMG_6754.pdf



Property of Special Collections, University of Washington Libraries



Property of Special Collections, University of Washington Libraries

1995 - Political problems are getting worse – we just didn't know it yet

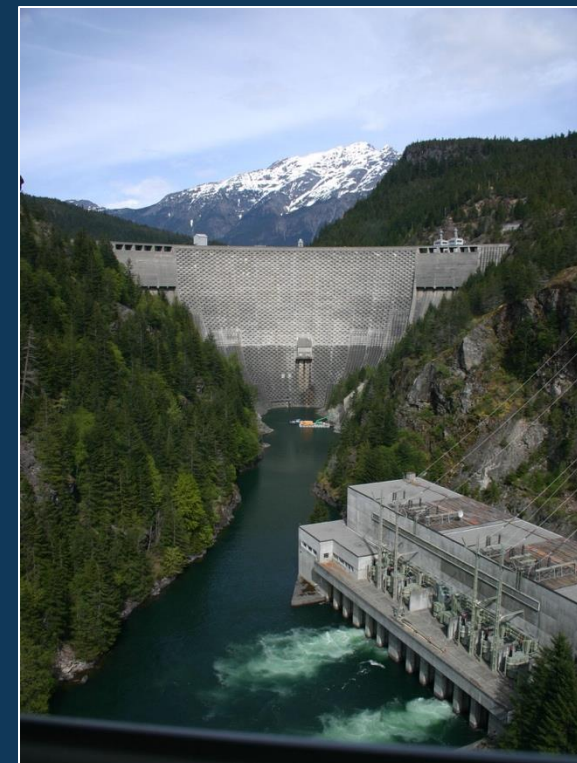
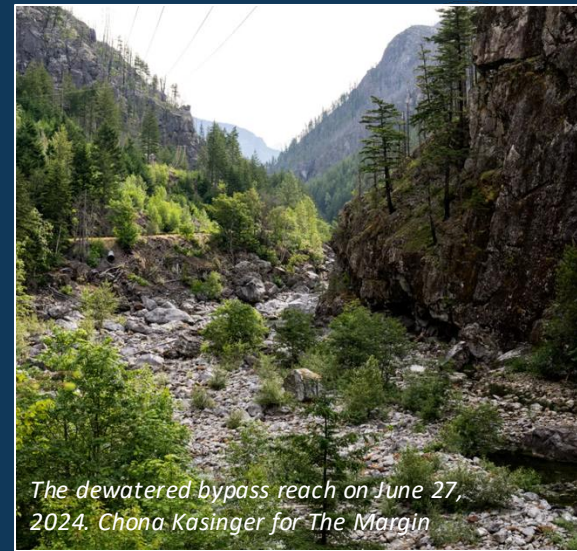
1995 SCL Relicenses the Skagit Project Studies

National Park Service director and North Cascades National Park Chief of the Natural and Cultural Resources Division said that he believed *“SCL was working toward a pre-determined conclusion that anadromous fish were historically blocked by natural barriers prior to the dam’s construction”* and

“These efforts created the *false impression* that the Original Impacts Report would be developed using the scope of work agreed to by the stakeholders in providing an accurate account of the original impacts of SCL’s dams.” but that this in fact did not happen. He concluded by saying *“Consequently, SCL avoided mitigation for the impacts of its dams on the river, on anadromous fish”* (source [A River of Deception - The Margin](#))

SCL 1995 license only required SCL to:

- Purchase 10,000 acres of land in Skagit county
- No Fish Passage





1998 – Pressure was mounting in the system

- ❖ 1998 Puget Sound Chinook were listed as threatened under the ESA
- ❖ 2005 Skagit Chinook Recovery Plan
 - ❖ Mostly written by Swinomish Indian Tribal Community / SRSC staff
 - ❖ Seattle City Light provided funding and technical input
 - Identified the estuary habitat as the primary limiting factor
Delta farmland must be flooded with saltwater to create habitat
 - *Gave SCL hydropower project a free pass*
 - ❖ Adopted by NMFS in 2007
 - ❖ Upper Skagit Indian Tribe objected
 - ❖ No input or buy-in from the local community



2005 – 2021

We believed things are going well

Significant progress toward implementing estuary habitat restoration projects to address limiting factors

6 of 8 - Near Term Projects Complete

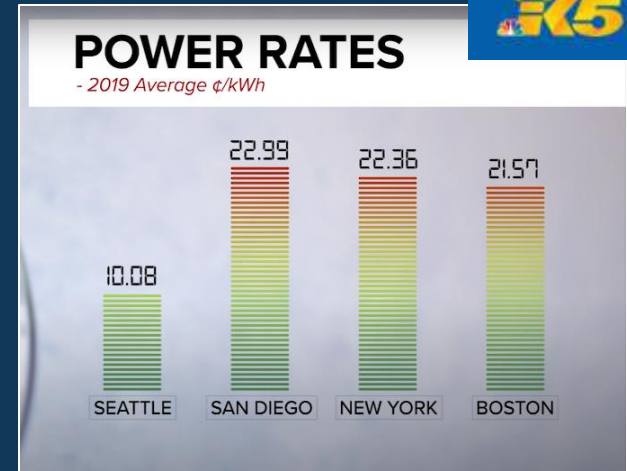
3 of 6 - Long Term Projects in progress



Fisher Slough Restoration – levees, drainage infrastructure, and habitat

We were seriously wrong

- 2016 - SCL received green hydro-power certification w/o fish passage
- 2020 – SCL initiates relicensing
 - Initial SCL position – **No Fish Passage**
 - Claim the estuary as the limiting factor





SKAGIT RIVER DAMS

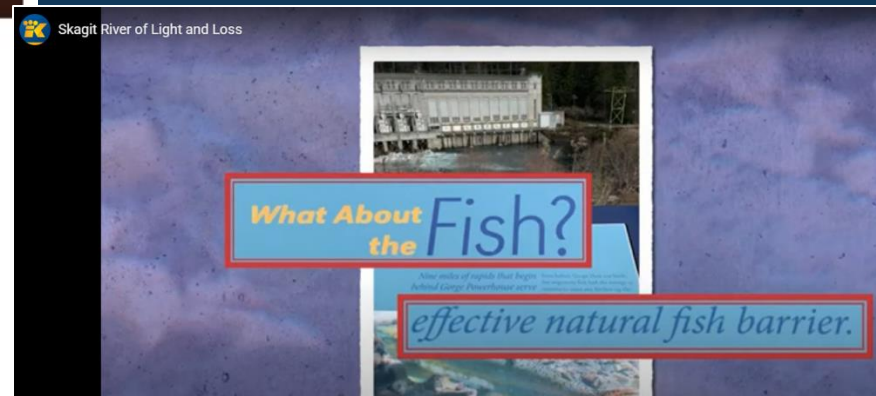
Court of Appeals sides with Sauk-Suiattle Tribe in 'greenwashing' case against Seattle City Light

The Tribe accused Seattle of misrepresenting its Skagit River dams as being environmentally friendly, and demanded the utility do more to protect fish on the river.

[Court of Appeals sides with Sauk-Suiattle Tribe in 'greenwashing' case against Seattle City Light | king5.com](https://www.king5.com/story/news/politics/government/2021/04/29/court-of-appeals-sides-with-sauk-suiattle-tribe-in-greenwashing-case-against-seattle-city-light/7411140002)

Seattle's Skagit River dams hurt salmon, orcas and Native American culture, agencies say

A new KING 5 investigation "Skagit, River of Light and Loss" reveals cost-effective electricity generated for the city of Seattle comes at a price.



April 2021 – SCL hired new law firm

May 2021 – we were officially excluded from settlement discussions



September 2021 – our WTF moment

September 9, 2021 - EarthJustice –files a 60-day intent to sue the Corps

- Tidegate Fish Initiative Agreement with NMFS linked district support of habitat restoration projects identified for recovery with streamlined permitting via a programmatic BiOP (2010-2021)
- Alleges Districts are the problem – not implementing estuary habitat restoration project

On September 22, 2021 - Seattle City Council passed Ordinance 126438

- Creates the “Skagit Habitat Enhancement Program”
- “early implementation measure ... that will partially address the Skagit Project’s impact
- Actively directs funding to the estuary for habitat restoration
- Authorized \$2,500,000, renewable annually – no idea who is getting this money
- County passes an ordinance making it illegal to use Skagit Farmland for off-site mitigation

September 29, 2021 - NMFS reinitiates ESA consultation on tidegate repair and replacement

- “Given the progress to date on [estuary] habitat restoration compared with the expectations”
- We were given no opportunity to respond

No Transparency 2005 Skagit Recovery Plan



NMFS Letter to the Corps – Sept 2021 reinitiating consultation

“Given the progress to date on habitat restoration compared with the expectations set forth in the Opinion. NMFS recommends the Corps request reinitiation”

Since 2021 we have actively requested WDFW and NMFS to engage and provide transparency about Skagit salmon population trends and outstanding habitat restoration necessary address Chinook recovery plan habitat restoration goals

- ❖ Numerous letters, e-mails, meetings
- ❖ 2023 & 2025 State Legislative Budget Provisos (Senator Muzzall)
- ❖ *Issues identified in 2021 as it pertains to concerns about chinook recovery habitat restoration goals have not even been discussed*

SCL Settlement includes Estuary Habitat



Seattle City Light Wants Skagit Farmers to Kneel Before the Emerald City Overlords

- ❖ License articles include significant funding for estuary restoration
- ❖ Goal - convert thousands of acres of private Skagit farmland to habitat / estuary
- ❖ Projects would require modifications to our existing dike and drainage infrastructure

- ❖ Funding is not aligned with Chinook Recovery Goals
- ❖ Can be used for the random conversion of farmland; or
- ❖ Can be used for mitigation required for other BiOPs on the Skagit Delta



[Farmers call foul, accuse Seattle of Skagit County land grab | FOX 13 Seattle](#)



High Level Take-Aways

Theme #1

The No Name Slough Jeopardy BiOP shifts restoration actions specifically identified in the Chinook Recovery Plan to the Districts as mitigation. This BiOP appears to be the vehicle for SCL settlement money to hit the ground.

Theme #2

We have been locked out of the room for 5-years. So long as there is no transparency regarding progress toward estuary habitat restoration projects / estuary limiting factors -

- ❖ Farmers and districts will continue to be blamed for the lack of fish
- ❖ Farmers and districts will continue to experience tremendous political and regulatory pressure
- ❖ There will be resistance to implementation of the SCL fish passage program



Thanks for your time -

For More Information

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