

## KERR PROJECT ACQUISITION: AN IMPORTANT INVESTMENT

(Volume 1, Issue 7)

\* \* \*

Last August, a tour of the Kerr Project included several Tribal Elders, interested community members and personnel from SXʷNQEʔELS L SUWEČM / KSUKĪEMUMAE 'A·KAE MUKWA'ITS, Inc., the Tribal corporation which does business as Energy Keepers, Inc. (EKI), and whose job is managing the acquisition of the Kerr Hydroelectric Project.

Simply, it was a walking tour of the Kerr Project works, starting in the powerhouse shop, then moving onto the walkway of the arched dam itself, and wrapping up with a look at the guts of the facility-- the turbines and generators of the power house.

But upon more consideration, it becomes clear that the tour represented a bigger opportunity than just witnessing Flathead River water running through the turbines to generate energy.

“It’s a big opportunity for the Tribes to manage their own land and water,” said Tony Incashola, director of the Salish Pend d’Oreille Culture Committee. “It will bring back a lot of comfort to the Tribes, knowing that a sacred site is back in their management.”

For several of the attending guests, including Tribal Elder Eneas Vanderburg who witnessed the dedication of Kerr Dam in 1939 when he was only 9 years old, touring the Kerr Project works was an opportunity they never thought they would have during their lifetimes.

Today, though, it is less than two years before the Confederated Salish and Kootenai Tribes exercise their rights to acquire the Kerr Project in September 2015. In doing so, they will become the first Indian tribes in the nation to own and operate a major hydroelectric facility. Now staking claim at this place that holds such significant meaning-- culturally, spiritually, geographically and economically-- isn’t out of reach for much longer.

“By looking at the opportunities, and the stark realities of the current FERC license, acquiring the Kerr Project has obviously taken high priority for the Confederated Salish and Kootenai Tribes,” said EKI Board Chairman Tom Farrell. “There has been a lot of dialogue, deliberation and considerable planning. Because there is so much at stake here, and because we have one shot at acquiring the Kerr Project, we owe it to the community to get it right. As Tribal Members, this resource affects our grandchildren, and their grandchildren, and so on through the generations. Decisions are not being made lightly.”

To date, the tribal corporation, Energy Keepers, Inc. (EKI) has been established to manage the process of acquisition, including due diligence evaluations, planning, personnel issues, financial considerations, and preparations for the marketing and transmission of power upon ownership.

Acquiring this hydroelectric facility will be a major event for the Tribes on several fronts. Not only does the acquisition of the Kerr Project provide an important opportunity for the Tribes to regain control of natural and cultural resources lost since the start of construction in 1934, there is also potential to secure a greater financial foundation for the Tribes with this investment.

Currently two streams of annual payments come to the Tribes from the Kerr Project. The first, a yearly land rental payment, the second, a yearly payment for the costs to mitigate damages done to fish and wildlife resources caused by the construction and operation of the hydroelectric facilities. The amount of each payment changes over time, based on changes to the Consumer Price Index (CPI). In 2013 the land rental payment is expected to be \$19 million and the fish and wildlife mitigation payment is expected to be \$2 million.

The \$19 million land rental payment to the Tribes has become a predictable, reliable stream of income, that gradually increases each year. However, unless the Tribes exercise their right to acquire the Kerr Project, per the provisions set forth in the current Federal Energy Regulatory Commission (FERC) license, this current level of payment to CSKT is not guaranteed in the future.

“The margin of Kerr-related revenues is dependent on ownership,” said Charmel Gillin, business manager at EKI. “Any alternatives to CSKT ownership have the potential to negatively impact the sustainability of today's Tribal government strength and successive benefits to the membership, now and far into the future.”

Terms negotiated by CSKT in 1985, and adopted by the FERC into the license of the Kerr Project, allow for CSKT to acquire the facility in 2015. And until acquired, there is a requirement that the land rental payments be made annually by PPL Montana to the Tribes on a graduated basis. But more critically, there are also terms in the license that allow for renegotiation of the land payment by PPL Montana if the Tribes do not exercise their right to acquire the Kerr Project during their window of opportunity.

Acquiring the Kerr Project with a corporation wholly owned by the Tribes, such as Energy Keepers, Inc., assures the continuation of this land rental payment well into the future.

Additionally, upon acquisition and successful operation of the Kerr Project, there is potential for a substantial increase in revenues from the sale and transmission of the electricity produced, exceeding the current status quo.

“The acquisition of the Kerr Project is an incredible business opportunity for the Tribes,” said Brian Lipscomb, CEO of EKI. “Without ownership of the Kerr Project, the current

and primary source of income would continue to be the land rental payment. Though, under terms allowed by the FERC license this payment would be at risk both in its reliability and predictability”

Throughout the years, CSKT’s dedication to acquiring the Kerr Project has been demonstrated by ongoing, regular financial investment on an annual basis. In 1985, the Tribal Council decided that CSKT should put aside approximately \$500,000 annually toward the Kerr Acquisition Fund.. Each subsequent Tribal Council has reaffirmed this strategy by setting aside \$500,000 each and every year since. By 2015, this account will have about \$32 million in total value.

Currently, the exact price of acquisition is in dispute. PPL Montana, the current owner and operator of the Kerr Project is demanding that they conveyance price should be \$51.6 million. The Tribes are disputing PPL Montana’s demand, stating that it far exceeds the actual cost per provisions in the current FERC license. A decision on the dispute is expected to be rendered by a three-person arbitration panel in March 2014

Irregardless of the outcome of this arbitration, in order to assure that CSKT can acquire the Kerr Project, EKI is proceeding as though it will need to borrow funds for the acquisition price of the Project. To make sure the principal amount of the loan, and the interest garnered on the borrowed funds flows back to the Tribes, rather than to an outside investor for the project, the Tribes will self-finance the investment with Tribal funds.

On August 29, 2013, Tribal Council obligated funds from the remaining Salazar trust settlement for an irrevocable letter of credit to EKI. This action assures that the borrowed funding needed by EKI for the acquisition and operation of the Kerr Project will be made available to EKI, and secures a market based return ultimately for the membership’s benefit.

“The monies that the Confederated Salish and Kootenai Tribes were awarded as part of the settlement for the mismanagement of Tribal government trust resources align well with the investment we make today for the Kerr Project,” said Tribal Council Chairman Joe Durglo. “The Salazar settlement was based on the fact that the federal government failed to compensate and account for billions of dollars in trust resources such as our water, timber, and minerals. These assets were taken from Indian tribes, including CSKT, for decades. The settlement we received was on the back of our ancestors who sacrificed, and many times suffered, because of this injustice. But even in the midst of hardship, our forefathers kept a focus on the next generations, and made decisions that would benefit us here today. Now we are in a position to honor those sacrifices, and invest the monies we received so that someday future generations can also look back, with pride, knowing that we are financially solvent and stable-- a Tribal government that provides important services to our community in perpetuity.”

By making the investment with the Salazar settlement money toward the Kerr Project, ultimately, payments from the interest gained on the loan, and the principal amount, will

flow back to the Tribes, from EKI, over a period of twenty years. This will keep economic resources circulating in the local economy for decades, fostering the ability of the Tribes to bolster programs, services and infrastructure long into the future.

“All of the work that I have been involved with while employed by my Tribe, has revolved around anticipating that someday we would have the opportunity to acquire the Kerr Project,” said Lipscomb. “Here is a site that is sacred to our communities, where our Tribal Members lost their lives during the construction of the facilities, where an important cultural and natural resource site stands, and now we stand on the verge of taking this place back. We will be the first Tribes in the nation to own a major hydropower facility. We will exercise our sovereign right to manage our resources for the long-term sustainability of the People. It is an honor to witness and be part of the process today.”