

## Historical Introduction to the Kerr Hydroelectric Project

\* \* \*

Today the Salish, Pend d'Oreille and Kootenai Tribes stand on the verge of acquiring the Kerr Hydroelectric Project, otherwise known as Kerr Dam. The dam, located about five miles southwest of Polson, is a three-unit hydroelectric plant with the capacity to generate 188 megawatts of electricity. Considering that one megawatt can satisfy the average energy needs of about 750 households, Kerr Dam is an important part of the infrastructure in the region.

When the Tribes exercise their option to acquire the dam in 2015, they will become the first Tribes in the nation to own and operate a major hydropower facility. Ultimately, owning and operating Kerr Dam will be a milestone for the Tribes as they continue to maintain and manage important natural resources within the Flathead Reservation.

It is a story that spans many years, with many twists and turns.

Though the Hellgate Treaty of 1855 established the Flathead Reservation for the “exclusive use and benefit of the Tribes,” in 1904, the Flathead Allotment Act would open up the reservation to non-Indian homesteaders, many of which would come to the area and stake claim to lands deemed “surplus” by the federal government.

To accommodate a larger number of allotments and thus allow for more homesteads for non-tribal members, the Flathead Indian Irrigation Project (FIIP) was constructed— a complex system of engineered dams, reservoirs and canals which dramatically altered the natural systems of the reservation.

In addition to changing the natural flow of water on the reservation, FIIP also required electricity for the pumping of water from the lower Flathead River to assure seasonal refill of Pablo Reservoir, one of the many reservoirs needed for the project. To provide this electricity construction of a run-of-the-river hydro power facility was initiated. This development later became the site of Kerr Dam.

The need for electricity for copper mining activities in Butte, Mont. and smelting activities in Anaconda, Mont. were the driving force behind the Montana Power Company's proposal to expand the original power development at the site to what would become Kerr Dam. The federal government saw the interest of Montana Power Company as a way to cover the costs of construction of the irrigation project and thus a mutually beneficial relationship was established.

The Tribes were not consulted on the proposal for building a dam, and ultimately protested construction of a dam at the falls, in consideration of the cultural importance at the site.

The income from the sale of the electricity at the dam was subject to regulation by the Federal Energy Regulatory Commission. The majority of the income was directed to Montana Power Company to pay its cost of construction and operation, and to pay a profit for its shareholders. Additionally, a block of electricity was provided to FIIP at the cost of production, the use and sale of this electricity designated to three purposes: to pay for the indebted irrigation project; to provide power to non-Indian water users; and to provide power to the Bureau of Indian Affairs.

Initially, the Salish, Pend d'Oreille and Kootenai Tribes would not benefit financially from the deal. But after much protest and litigation, ultimately the Tribes would successfully negotiate a share of the proceeds, whereby Montana Power Company had to pay an annual charge for the use and occupancy of the Tribes' lands that underlie the dam's location on Flathead River and the reservoir's location on Flathead Lake.

Construction of Kerr Dam began on May 23, 1930, by Rocky Mountain Power, a subsidiary of Montana Power Company. After a time, the economy of the Great Depression would stall construction of the dam. Though, during the height of construction, around 1200 men were employed, with the higher skilled workers earning a couple of dollars per hour, and lower skilled workers earning only forty to fifty cents an hour. Tragically, several Tribal Members would lose their lives in the midst of performing some of the most perilous and difficult tasks of the construction.

By 1939, the facility began producing power, with the first transmission lines running to the mining operations of southwestern Montana and to the construction site of what was to become Hungry Horse Dam.

Named after Frank Kerr, the president of Montana Power at the time of the dam's completion, today Kerr Dam is regulated by the Federal Energy Regulatory Commission. Licenses for power production are commonly granted in 50-year periods. The most recent license for Kerr was issued in 1985, and at which time CSKT became a co-licensee with the Montana Power Company. PPL Montana acquired the dam from Montana Power Company in 1999 when Montana Power Company sold all of its generating assets upon deregulation of the power industry in the state. In 2014, Kerr was sold once again, this time to Northwestern Energy. On September 5, 2015, CSKT will purchase the hydroelectric project for approximately \$18.2 million.

Critical points during the 1985 negotiation include CSKT agreeing to take a reduced payment for the use and occupancy of the lands where the dam sits, in exchange for taking an exclusive option to acquire the dam in 2015. In 2013, this annual land use payment is approximately \$19 million. Additionally, PPL Montana's selling price is set by a formula that includes the original cost of construction, less depreciation—in essence the regulated book value of the assets, an amount that is considerably less than the deregulated market value of the assets. When the Tribes exercise their option to acquire the dam in 2015, there will be twenty years remaining on the license which expires in 2035.

Kerr Dam is a concrete arch dam 381 feet in length and 200 feet high. It controls the elevation of the top ten feet of Flathead Lake, and has an average production of 1.1 million megawatt hours of energy per year, it is a valuable asset that the Tribes intend to acquire at their earliest opportunity in September of 2015.

In preparation for the conveyance of Kerr Dam to the Confederated Salish and Kootenai Tribes, the Tribes have begun implementing a systematic strategy to ensure readiness and success and to limit risks. One important action the Tribes have taken to accomplish this is the creation of a tribally owned corporation, **SX<sup>w</sup>NQÉ?ELS L SUWÉČM / KSUKŁIŁMUMAŁ ʔA·KAŁMUKWA'ITS**, Inc., which does business as Energy Keepers, Inc.

Under section 17 of the Indian Reorganization Act, in September of 2012, the Federal Charter of Incorporation was formally approved. Today Energy Keepers, Inc. is charged with the management of the acquisition process, and ultimately with management of the operations of the dam upon acquisition.

Since revenue from the land use payment has been a major component of the annual Tribal budget, and will continue to be even after acquisition, the bylaws for the Tribally owned corporation are unique in that there is no allowance for Energy Keepers, Inc. to retain the earnings from the sale of the power from Kerr Dam. Additionally, there are provisions for the company to meet with the shareholders' representatives (i.e. Tribal Council) at least twice a year to accommodate the presentation and ratification of an annual operations plan and annual performance report.

The corporation is run by a Board of Directors that includes five members appointed by the Tribal Council. Because of the complex nature of the power industry, the unprecedented nature of the Kerr Dam conveyance process, and the challenging nature of management of a major hydropower facility, the Tribes established more specific qualifications for the Board of Directors of Energy Keepers, Inc. than for its other corporations. Three Directors are expected to be enrolled members of CSKT, with expertise in the field of energy or related matters. The remaining two Directors are expected to have knowledge and experience necessary to develop, manage, and maintain an energy-related business enterprise and/or the financial aspects of the business enterprise as a result of having attained the educational and professional background necessary to accomplish demonstrable success and leadership within the energy industry.

The Directors are as follows: Thomas J. Farrell, CSKT Tribal Member and Board Chairman; Daniel F. Decker, CSKT Tribal Member and Board Vice Chairman; Robert Gauthier, CSKT Tribal Member and Board Secretary; Thomas A. Babineau, Board Member; Lon Topaz, Board Member

\* \* \*