RE: Kern Hydroelectric Project, FERC No. 5 + No. 5-094

Dear Secretary Bose:

I appreciate your agency granting the one month extension of comment period to the five parties listed in your May 2, 2014 letter.

However, our original request for extension, and I believe the intent of others requesting the extension, was for an open extension — for anyone or any organization and that opportunity to be heard comment; my request also was for open hearings in the county seats: Poison/Lake County and Kalispell/Flathead County. I believe the turnouts would be significant, and so I hereby renew my request for an open extension comment period and for the two hearings.

In this comment, rather than repeat every comment from my initial letter dated March 29, 2014, I hereby incorporate all comment from that letter, and will try not to be redundant.

While it is now more clear to me that the
Correct request for transfer of licenses is between PPL Montana LLC & Northwestern Corporation. We feel the following comments remain relevant to the proceedings.

1. Any transfer of licenses or dam structure/property must be seen in light of the original renewed license of 1985 (finalized @ 2000 after drought studies, ramping rates, + flow regimes were added to) and to the contemplated transfer of license to the C.S.K.T. tribes. In addition, the CSKT are looking to acquire the dam (see attached Flathead Beacon articles: Feb. 19, 2014 & March 12, 2014).

In my discussions in the past week with FERC staff atty, Thomas Sharp, it appears that despite current review of transfer between PPL Montana & Northwestern, there is no review of the proposed transfer of facilities to the CSKT, either proposed or planned, by FERC. Hence, I take this opportunity to raise objection to the lack of such a parallel review process for the CSKT proposed take over of Kerr Project NO. 5.

There are numerous unresolved issues, especially as the CSKT are the first tribe in the country to potentially own & operate a FERC hydro project. My discussions with Mr. Sharp have confirmed this is a unique situation, as several issues have surfaced that it appears were not contemplated in the original re-licensing from 1985, specifically...
THE FOLLOWING ISSUES NEED TO BE ADDRESSED.

2. TAXATION. As mentioned in my previous letter, there is over $1 million at stake for Lake County alone... There may well be implications for the state of Montana, and perhaps the Federal Govt., related to taxation. Mr. Sharp commented that there may be a state court issue, and that such action had not, in his experience, come in front of FERC.

PREVIOUSLY TO THIS, THIS IS A HUGE QUESTION THAT FERC NEEDS TO ADDRESS PRIOR TO FINAL APPROVAL OF SALE + TRANSFER OF LICENSES, ETC. TO NORTHWESTERN OR THE TRIBE.


ART:IV B. CONSTRUCT OPERATE, AND MAINTAIN... SO AS TO GENERATE A PROFIT AND ACCUMULATED INCOME, THE KERR HYDROELECTRIC FACILITY AND RELATED ASSETS, BOTH TANGIBLE + INTANGIBLE."
Thus from B, there is clearly identified: "For Profit" and "Other Assets Including Intangible". This raises more unresolved issues: How can a for-profit business not pay taxes? What are the intangible assets? One asset that may be considered tangible or intangible is the water rights related to KERK project. Thus, it is now clear that FERC should be cognizant of and examine the entire proposed Water Compact between the State, Feds, & CSKT...

Yes, that's all 1,200+ pages!

FERC should also be looking at related court cases in both State & Federal Court, including the case recently filed by the tribes in Federal Court. The issue of tribal quasi-sovereignty is far from resolved and FERC must require resolution of issues such as taxation, water rights, enforcement, jurisdiction before any license transfer that contemplates the CSKT operating or owning KERK Project No. 5.

A final comment on this issue is the fish issue as related to Flathead Lake & the Flathead River - both above the lake and below the dam. Not only is the fisheries issue complex and extremely important to the two counties but it is also controversial. On this subject, the tribe has recently asserted that it has
A "SOVEREIGN NATION" RIGHT TO ACT UNILATERALLY—
AND DESPITE CLEAR STATE OF MONTANA OPPOSITION—
IMPLEMENT A Gill NETTING PROGRAM ON FLATHEAD
LAKE. AS WITH THE RECENT CSKT LAWSUIT, FILED IN
FEDERAL COURT, WHEREIN THE TRIBES CLAIMED:
OWNERSHIP OF THE WATER.

HOW WILL FERC ENFORCE ARTICLES WHEN THE
TRIBE ATTEMPTS TO ASSERT "SOVEREIGN NATION"
STATUS V. FERC & THE UNITED STATES? I BELIEVE
I CAN ALREADY HEAR PEOPLE IN D.C., SAYING,
IT CAN'T OR WON'T HAPPEN... BECAUSE....

THESE QUASI-SOVEREIGNTY ISSUES MUST
BE ADDRESSED BY FERC.

OF PARTICULAR CONCERN AS MENTIONED IN MY
PREVIOUS LETTER UNDER IS THE ISSUE OF
U.S. ARMY CORPS OF
ENGINEERS AGREEMENTS OF 1964-65 (THE MEMORANDUM
OF UNDERSTANDING—M.O.U.). HOW WILL FERC
ENSURE AND ENFORCE THE ARTICLES IN
THE LICENSE DEALING WITH FULL POOL IN
THE SUMMER RECREATION SEASON? ESPECIALLY
SINCE THE TRIBES ARE PREVIOUSLY ON BOARD
WITH PROPOSALS TO LOWER THE LAKE FULL
POOL LEVEL BY ONE FOOT TO 2,892.0F.

THE PREVIOUS RELICENSING HEARINGS FOR
THE 1985 LICENSE REVEALED MUCH CONCERN
OVER THIS ISSUE. THE TWO COUNTY ECONOMY
AND ABILITY OF MANY INDIVIDUALS & BUSINESSES
is tied to the current full pool lake level of 2,893.0. This navigation right is further protected under Article 8 of the Treaty between the U.S. and numerous tribes, including the CSKT, originallyOct. 17, 1855. This treaty was ratified by the Senate & signed into law by Franklin Pierce, President of U.S., on April 25, 1856; cite: 11 Stat. 657. From Article 8: "...and that the navigation of all lakes and streams shall be forever free to citizens of the United States." Thus it is essential a clear means of enforcement & remedy in a timely fashion be resolved before license transfer takes place, either to NorthWestern Energy in the short term and/or the CSKT in @ one year.

I find it personally very sad that the final set of issues must be identified and addressed racial in 2014: BLOODLINES & DISCRIMINATION. During the Oct, 2012 hearing in Ronan, MT, re: "The proposed WATER CONTACT," I personally questioned the Tribal Atty. (and past Tribal Chair) Rhonda Swaney about this issue. I asked: "Can I join the Tribe?" After consulting with other CSKT members I was told I had to have @ one-fortieth or more Salish or Kootenai, Blood or both, and therefore, unless I met that definition, I could not join the CSKT.

As a person who fought the battles for civil
RIGHTS DURING THE 1960'S AND 1970'S, AND HAS ALWAYS
BELIEVED, AND PRACTICED, AND PROCLAIMED EQUALITY
FOR PEOPLE OF DIFFERENT RACES, NATIONALITIES, AND
BACKGROUNDS, I TAKE PERSONAL OFFENSE AT THIS
EXCLUSIONARY POLICY BASED ON "RACE," OR "BLOOD
PURITY OF LINEAGE.

IF SOMEONE WANTS TO BRAND ME AS "WHITE," SO BE IT...
BUT I PREFER "AMERICAN MUTT." AS FAR BACK AS
I HAVE HEARD IN MY FAMILY HISTORY THE LAST ONES
OFF THE BOAT WERE MY GREAT-GREAT GRANDPARENTS FROM
GERMANY.... OTHER BLOOD LINES ARE ENGLISH, IRISH,
SCOTTISH, FRENCH... AND POSSIBLY NATIVE AMERICAN INDIAN
FROM THE MID-WEST... SHOULD ANY OF THAT
REALLY MATTER? I SAY: NO! SO IN 2014, IN
WESTERN MONTANA, IN THE UNITED STATES OF AMERICA,
I SAY: NO! TO ANY FORM OF DISCRIMINATION OR
RACISM, WHETHER IT IS IN THE N.B.A. IN LOS ANGELES
OR HERE IN WESTERN MONTANA.

AND SO I LOOKED UP THE TRIBAL HISTORY AND
FOUND THE C Sh I T INCORPORATION FROM @ 1933-39,
AND THEN I RESEARCHED FURTHER, AND RECENTLY FOUND
AMENDMENT II OF THE "CONSTITUTION AND BYLAWS OF THE
SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
MONTANA" WHICH WAS PASSED/IMPLEMENTED MAYS
1960 (ENCLOSED) STATING IN BLACK AND WHITE PRINT:
"AMENDMENT II, ARTICLE II OF THE CONSTITUTION
ENTITLED "MEMBERSHIP" IS HEREBY AMENDED... SEC. 2
PRESENT MEMBERSHIP... WHO POSSESS ONE-FOURTH (1/4)
...
OR MORE SQUAM OR KOOTENAI BLOOD OR BOTH AND ARE
BORN TO A MEMBER OF THE CONFEDERATED TRIBES..."

THE SAME IS TRUE IN SEC. 3. OF THAT AMENDMENT
II (ART. II OF CONSTITUTION) "FUTURE MEMBERSHIP...
C) THAT HE POSSESSES ONE QUARTER (¼) DEGREE OR
MORE BLOOD OF THE SQUAM OR KOOTENAI TRIBES OR
BOTH..." (COPY ENCLOSED).

IT IS MY BELIEF THAT THIS EXCLUSIVE
POLICY BASED ON ¼ BLOOD Purity OF LINEAGE IS
A FORM OF RACIAL BIAS AND DISCRIMINATION. THIS AMENDMENT
TO THE CSKT CONSTITUTION & BYLAWS WAS FROM
MAY 5, 1960... BEFORE THE CIVIL RIGHTS LEGISLATION
OF THE 1960'S, AND FOLLOWING DECADES IT WAS
FROM A TIME WHEN JIM CROW AND OTHER
FORMS OF SEGREGATION & DISCRIMINATION WERE STILL
PART OF THE FABRIC OF THIS COUNTRY. WE ARE
NOT THAT SAME COUNTRY TO DAY! THANK GOD!
AND THANKS TO ALL THOSE WHO FOUGHT THE
BATTLES FOR CIVIL RIGHTS & EQUALITY OF
OPPORTUNITY FOR PEOPLE OF ALL RACES, COLORS,
NATIONALITIES, AND CULTURE'S.

therefore, I ASK FERC TO CAREFULLY REVIEW
THE POTENTIAL LICENSE TRANSFER AND SALE
OF THE DAM IN THE LIGHT OF THIS NEWLY
FACED AMENDMENT II LANGUAGE. IN 2014, IN THE
USA, IS IT LEGAL AND PROPER FOR ANY ORGANIZATION
OWNED OR ENTITY TO OPERATE UNDER A FEDERAL
LICENSE, AND CONTROL WATER THAT BELONGS TO
Flow from off the reservation— from the National Forests, in the Swan Range, from the Bob Marshall Wilderness, from Glacier National Park, from Canada, and from other sources in northwest Montana—and then that water flows onto the Feather Reservation, through Kerr Dam/Project No. 5, and then flowing from that Reservation, through 3 other States and many other dams in Bonneville system, and then to the Pacific Ocean, is it legal to have all that water controlled & licensed to any organization, corporation, or entity whose membership is based on blood purity of lineage?

I urge FERC to have the courage to ask that question... and address it.

A final comment on this subject: it is my personal understanding, from talking to the three guys who have operated the dam for many years, that the change in staffing has already begun, yes, prior to any transfer to Northwestern or CSKT.

I would urge FERC to look into all these issues raised here & by others... I would urge hearings in western Montana... and I would urge FERC consider a declaratory order(s) re: Kerr license transfer, and ownership, to either Northwestern or CSKT, to assure that license articles are not in jeopardy & to address issues stated above.

Respectfully,

[Signature]

William Guzman, Jr./Greene
Arbitration Panel to Decide Kerr Dam Price Tag

Tribes seeking acquisition of massive hydroelectric facility near Polson

By BILL TANISH of The Beacon

An arbitration panel is preparing to announce the final price tag for Kerr Dam, the 195-megawatt hydroelectric plant at the natural outlet of Flathead Lake near Polson.

The American Arbitration Association held a hearing last month in Newport, Calif., involving the facility's current owner, PPL Montana, and Energy Keepers, Inc., the new corporation tasked with acquiring and eventually operating the dam for the Confederated Salish Kootenai Tribes.

The CSKT is looking to acquire the dam, which sits on the Flathead River within the Flathead Indian Reservation, by September 2015 as part of an agreement dating back to 1985. The massive facility, which began operating in 1988, can store upwards of 1.2 million acre-feet of water and produce enough energy to power nearly 50,000 homes. With the acquisition, the CSKT would become the first American Indian tribe to own and operate a major hydroelectric power plant.

A three-member panel was established after both sides failed to reach an agreement on the purchase price. PPL Montana set the total acquisition cost at $49.5 million, while the tribes claimed a much lower price of $33.5 million.

The arbitration panel reviewed arguments from both sides and settled on partial costs within the overall agreement and a final decision on the overall agreement is expected by March 5.

The panel sided with PPL on the value of Kerr Dam's hydroelectric plant, roughly $46.36 million, which was roughly $1.9 million more than CSKT's estimate. Regarding flooding rights, the panel sided with CSKT and rejected PPL Montana's attempt at including $497,500 in legal fees related to a long-standing lawsuit over flooding rights at Flathead Lake. The panel told the company that those costs would not be included in the tribes' acquisition price. Also, roughly $103,700 in employee severance costs proposed by PPL was also rejected.

"We are pleased. Through these hearings, we got our day in court, and this partial award reflects some significant wins for the Tribes," said Brian Lipscomb, CRP of Energy Keepers. "We feel optimistic that our position is solid, and that our team did an excellent job in presenting our case before the panel. Now we will wait and anticipate their ruling that we expect to reflect what we agreed to in 1985 to the remainder of items in question."

The largest remaining question mark revolves around environmental mitigation costs that PPL contends should be included in the agreement and valued at $31.7 million.

PPL Montana purchased Kerr Dam in 1999 from Montana Power Company as part of the utility giant's sell-off after the state deregulated the power industry.

The CSKT has been the co-licensing for Kerr Dam since 1985. Under terms of their contract, the tribe has the right to acquire the project at "original cost less depreciation" in the fall of 2015 and become the sole owner and operator. The dam produces an average annual output of 1.1 billion megawatt-hours. The CSKT formally began to negotiate the acquisition in 2000, PPL Montana's hydroelectric facilities include Kerr Dam; its Thompson Falls Dam on the Clark Fork River; Madison Dam on the Madison River; Hauser, Hodak, Black Eagle, Rainbow, Cochrane, Ryan and Morony dams along the Missouri River; and Mystic Lake Dam on West Rosebud Creeks.

PPL has agreed to sell 11 facilities, including Kerr, to the largest electric utility in Montana, NorthWestern Energy, with more than 340,000 customers, has agreed to pay an estimated $900 million for the facilities last week to the Montana Public Service Commission voted 5-0 that NorthWestern's initial approval request was inadequate and asked the utility giant to provide additional figures that explain the impact of the deal on Montana customers. The company has said the acquisition would raise electric rates by about 4.2 percent.

NorthWestern has said the application also contains commitments to transfer the Kerr Dam to the CSKT.
Kerr Dam Closer to Tribal Ownership, New Name

Tribes poised to become first in the nation to own major hydroelectric facility

BY BEACON STAFF

The Flathead Reservation tribes are closer to becoming the first in the U.S. to own a major hydroelectric facility.

An arbitration panel in California settled on a price tag for Kerr Dam last week, setting the stage for the Confederated Salish and Kootenai Tribes' acquisition of the 194-megawatt plant in September 2015.

The CSKT must pay nearly $18.3 million for the dam located at the natural outlet of Flathead Lake near Polson.

The dam was been a source of controversy and opposition when it was built in the 1930s, and several people died during its construction.

Nearly 90 years later, the tribes filed a formal notice on March 4 with the Federal Energy Regulatory Commission expressing their intent to take over the facility as a part of a mission to maintain and manage important natural resources within the Flathead Reservation.

"Today we enjoy historic success in our diligent effort to acquire the Kerr Project," said Brian Lipcomb, CEO of Energy Keepers, Inc., a tribally owned corporation established to manage the facility's takeover.

With less than 19 months until the acquisition date, EKI is prepping for the future management and operation of the hydroelectric facility, as well as crafting a new name for the dam with the input of tribal leaders. The dam, which was completed in 1938, was named for the president of Montana Power Co. at the time, Frank Kerr. The CSKT tribal council will make a final decision on the new name, according to EKI.

By taking over Kerr Dam, the CSKT will become the first tribe in America to own and operate a major hydroelectric facility, as well as becoming the only entity in Montana to own an in-state dam. PPL is based out of Allentown, Pa.

The American Arbitration Association panel handed a final price more favorable to CSKT than PPL, Montana, the site's current owner. PPL, which purchased the dam from Montana Power in 1999, argued the tribes should have to pay $44.4 million for the entire facility. The tribes countered it should be $16.5 million.

The arbitration panel agreed with PPL that the facility's plant should cost $16.5 million, nearly $2 million more than CSKT estimated due to depreciation. The panel shot down PPL's proposed $987,000 as part of its legal defense costs in a long-standing lawsuit over flooding rights at Flathead Lake.

Kerr Dam is a concrete arch dam 281 feet in length and 105 feet high. It controls the elevation of the top 10 feet of Flathead Lake, and has an average production of 13 million megawatt hours of energy (MW-h) per year.

In 1988, FERC issued the dam's operating license to both Montana Power and the tribes to settle a contested proceeding. Montana Power, which sold its utility assets in 1997, was to operate the project for at least 20 years, after which the tribes would have the option to buy.

"This day represents an unswerving and long-standing commitment by the Salish, Pend d'Oreille and Kootenai Tribes to restore tribal stewardship over resources affected by the Kerr Project," said CSKT Tribal Chairman Ronald Trahan. "This is a big day in our tribal history that is especially meaningful to our communities because it represents self-sufficiency, resilience and vision by the tribes. Today we take a big step forward in acquiring the Kerr Project."

news@flatheadbeacon.com
_Tribes Move Forward with Gill-Netting in Flathead Lake_

Experimental suppression of lake trout shows positive results

By CHRISTIAN SCOTT (The Beacon)

The Confederated Salish and Kootenai Tribes have been making efforts to reduce about 100,000 non-native lake trout from Flathead Lake in 2014, using gill netting, recreational angling and fisheries suppression to achieve the goal.

The decision to move forward with gill-netting, which generated intense controversy between state and federal species, came after an extensive environmental analysis of the effects of the practice, as well as other methods of lake trout suppression under the Co-Management Plan.

The 2014 plan sets a harvest target of between 90,000 and 100,000 lake trout, and separates harvest by method that includes general recreational harvest, the Mack Days fishing contest and netting. This target figure represents about a 30 percent increase in the harvest measured over the last several years.

CSKT fisheries biologist Barry Hansen, who led the Environmental Impact Statement process, said the tribes launched the first phase of netting during the last two weeks of April.

An experienced netting team trained tribal officials said, in eight days of netting, caught 5,253 lake trout. One bull trout was inadvertently captured and immediately released. There is no mortality of bull trout resulting from the process, a major benchmark of success, Hansen said.

Since the explosion of non-native lake trout in Flathead Lake, the fish have out-competed native bull trout populations, which have diminished.

Additionally, 1,487 lake whitefish were netted. Like Mack Days, the fish were donated to local food banks.

Hansen said the high rate of bycatch of whitefish was unfortunate, but that the crews adjusted the depth of their gill netting and significantly reduced the number of whitefish inadvertently caught.

The main points of contention between the state FWP and the tribes are whether bull trout populations in the Flathead River Basin have improved or stabilized since 2000, when the tribe and Montana Fish and Wildlife and Parks, which shared fisheries management authority on Flathead Lake, adopted the Flathead Lake and River Fisheries Co-Management Plan with a goal of increasing the abundance of native bull trout and westslope cutthroat trout.

The co-management plan, which expired in 2010, relied on recreational fishing pressure and contests to control lake trout abundance.

With the expiration of the 10-year management plan, the tribe began a National Environmental Policy Act process to develop a new science-based policy for the reduction of the bullied lake trout population in order to benefit native fish in the lake and river system.

Alienated from that discussion is the tribe's long-time partner, the FWP, which separated itself from the process in a public sign of disapproval in March 2012. FWP, which has been charged with the dual mission of maintaining a recreational fishery and protecting the natural population of non-native bull trout, announced its withdrawal from the decision-making process.

**See Netting PAGE 22**

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**NETTING**

Continued from page 5

Netting continued...
CONSTITUTION AND BYLAWS
of the
SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION
MONTANA

Amendment II

Article II of the Constitution entitled "Membership" is hereby amended in its entirety to read as follows:

"Section 1. Confirmation of Rolls - The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

"Section 2. Present Membership - Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (1/4) or more Salish or Kootenai blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. Subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

"Section 3. Future Membership - Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he possesses one-quarter (1/4) degree or more blood of the Salish or Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.