

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BOB KEENAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 15-cv-1440 (RCL)
)	
NORMAN BAY, Chairman, Federal Energy Regulatory Commission, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**MOTION FOR EXTENSION OF TIME TO RESPOND TO
MOTION FOR PRELIMINARY INJUNCTION**

Defendants, Norman Bay, Chairman of the Federal Energy Regulatory Commission (FERC), *et. al.*, hereby move for a 7-day extension of time, through and including September 17, 2015, to respond to plaintiffs’ motion for a preliminary injunction. *See* ECF No. 19. In support of this motion, defendants state as follows:

1. On September 2, 2015, plaintiffs – two Montana citizens and a business – filed a motion for a temporary restraining order and preliminary injunction to prevent the imminent transfer of a large hydroelectric dam (the “Salish-Kootenai Dam,” and formerly known as the “Kerr Dam”) to CSKT, a coalition of Indian tribes. The transfer was to be conducted pursuant to a license granted by FERC in 1985 (32 FERC § 61,070 (1985)), which granted CSKT the right to purchase the dam on September 5, 2015, after paying a sum to be determined later. That sum was fixed by arbitration at \$18.3 million, and CSKT paid the agreed sum, thereby triggering the transfer. Accordingly, on September

1, 2015, FERC issued an order transferring ownership to the Tribes. (152 FERC § 62,140.) The formal transfer was set to occur at midnight MST on September 5, 2015.

2. Plaintiffs sought a TRO to prevent the transfer, arguing, *inter alia*, that it would cause economic harm to local farmers and businesses whose irrigation needs would not be respected after the transfer, and that the transfer implicated national security concerns insofar as – allegedly – radical Islamist elements in Turkey could be seeking to build influence within Indian tribes with an ultimate goal of carrying out terrorist attacks in the United States. *See* Complaint ¶ 89 (ECF No. 1) (“It is quite possible that the Turkish government, sponsored businesses and affiliated groups and members seek access to uranium deposits and bountiful water sources surrounding the Flathead Reservation for production of yellowcake capable of later conversion to a gaseous state for eventual use in incendiary devices.”).

3. The Court (through Judge Contreras) heard lengthy argument on the motion for a TRO on the afternoon of Friday, September 4, 2015. It denied that motion in a written order later that evening. *See* ECF No. 20 (holding that plaintiffs failed to establish likelihood of success on the merits, likelihood of irreparable harm, that the balance of equities tips in his favor, and that an injunction is in the public interest). Accordingly, on September 5, 2015, the Tribes took ownership of Kerr Dam and renamed it Salish-Kootenai Dam. *See* http://missoulian.com/news/local/cskt-officially-assumes-ownership-of-kerr-dam-announces-new-name/article_c1061b4d-0a60-5930-8f20-36ca6c0dd060.html (visited September 8, 2015).

4. Because the transfer sought to be enjoined has now taken place, and because the Tribes are operating the dam as envisioned in the 1985 FERC license, there is no emergent need to resolve plaintiff's motion for preliminary injunction to stop that transfer. Moreover, the opposition time for the motion fell over a 3-day holiday weekend, and responding requires coordinating input from many government agencies and considering plaintiffs' hundreds of pages of pleadings and exhibits.

5. Pursuant to Local Rule 7(m), undersigned counsel has conferred with counsel for plaintiffs, who stated that, due to his clients' geographic remoteness, he would be unable to determine their position regarding this request until the morning of Wednesday, September 9th. In light of the time-sensitive nature of the relief sought, defendants are filing the extension request immediately; if defendants learn of plaintiffs' position before the Court addresses the motion, they will file a notice so stating.

For these reasons, defendants seek a 7-day extension, through and including September 17, 2015, to respond to plaintiffs' motion for preliminary injunction.

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of defendants’ motion for a 7-day extension of time to respond to plaintiffs’ motion for preliminary injunction (ECF No. 19), and for good cause shown, it is hereby ordered that the motion is GRANTED. Defendants shall respond to plaintiffs’ motion for preliminary injunction by September 17, 2015.

Dated

Hon. Royce C. Lamberth
UNITED STATES DISTRICT JUDGE