

U.S. Department of Interior’s Bureau of Indian Affairs and State of Montana Curtail Flathead Reservation Irrigators’ Valuable Land and Water Rights In Favor of Confederated Salish and Kootenai Tribes

The economically valuable state land and water rights, federal and state [constitutional rights](#) and public safety of a community of generations-old privately held family agricultural, ranching and business interests operating on fee patented lands located on and appurtenant to the Flathead Indian Reservation in northwestern Montana have been seriously threatened by years of ongoing arbitrary, capricious and illegal and deceptive U.S. federal government agency (Federal Energy Regulatory Commission (FERC) and Department of Interior Bureau of Indian Affairs (DOI-BIA) and Fish and Wildlife Service (DOI-FWS)) regulatory practices and procedures [failing to honor the rule of law](#), and U.S. federal tribal self-governance/self-determination and sovereignty policies. Together with the State of Montana's ceding of aboriginal instream flow rights to at least one-fifth of State waters to the Confederated Salish and Kootenai Tribes (“CSKT”) of the Flathead Indian Reservation pursuant to the recently executed CSKT Water Compact (entered into between the State of Montana, the U.S. Department of Interior and the CSKT), these federal government practices, policies and actions collectively have enabled the CSKT to diminish these irrigators’ exercise of and access to their legally and validly held water rights via unilateral assumption of actual control of ALL physical infrastructure (dams, reservoirs, irrigation pumping systems and canals the irrigators previously paid for, including the Kerr Dam, a large “black start” “category 3” high safety risk dam located partially on the Reservation, the exclusive ownership, control and management of which was transferred free and clear to the CSKT on September 5, 2015.

A small group of concerned Montana citizens who operated businesses and served as state legislators attempted to stop the transfer by the government and NorthWestern Energy Corporation of Kerr Dam to the Tribes at the 11th hour by [filing a lawsuit in U.S. federal court in Washington, D.C.](#) These citizens argued that the court should temporarily stop the dam transfer until it could carefully evaluate whether the dam transfer had been facilitated by ongoing long-term non-transparent and deceptive government practices, noncompliance with otherwise applicable federal regulatory requirements, racially discriminatory government agency practices favorable to the CSKT at irrigators’ expense, and by the [serious breach of national security protocols](#), which were [later proven valid](#), especially considering [the Tribes’ relationship with the Islamic Government of Turkey](#). Unfortunately, due to the intense campaign of [White House](#) and media scrutiny and disparagement that followed [seeking to portray them as “racists,”](#) these irrigators decided to withdraw their lawsuit without prejudice so that they might accumulate additional evidence and fight another day.

The following documents reflect that an Emergency Action for Temporary Restraining Order (TRO) and Preliminary Injunction (PI) had been filed in the U.S. Federal District Court for the District of Columbia, partially on national security grounds, in an effort to temporarily suspend the illegal conveyance of Kerr Dam to the CSKT:

- [Complaint- Keenan v. Bay](#), Civil Action No. 1:15-cv-01440 (9/2/15)
- [Motion for TRO/PI](#)
- [Memorandum in Support of Motion for TRO/PI](#)

- [Proposed Order](#)
- Exhibits 1-68 of Evidence Supporting Complaint:
 - [Exhibit 1](#) (FERC 1985 Agreement 7-17-85)
 - [Exhibit 2](#) (FERC ALJ Order - 4-16-85)
 - [Exhibit 3](#) (DOI 59 FR 28737 - Nov. '94)
 - [Exhibit 4](#) (DOI 60 FR 2598 - Feb. '95)
 - [Exhibit 5](#) (FERC Order Amending 1985 Agmt - 1997)
 - [Exhibit 6](#) (FERC Order Amending 1985 Agmt - 1998)
 - [Exhibit 7](#) (FERC Order Amending 1985 Agmt - 2000)
 - [Exhibit 8](#) (DOI-BIA EIS Drought Mgmt Plan - 2002)
 - [Exhibit 9](#) (DOI-BIA Draft EIS Drought MP - 2005)
 - [Exhibit 10](#) (DOI -BIA Final EIS Drought MP - 2010)
 - [Exhibit 11](#) (*FBJC v DOI-BIA*, dismissed 2015)
 - [Exhibit 12](#) (AAA Final Award - Kerr Dam Price (2014)
 - [Exhibit 13](#) (DOI Solicitor Gen'l Notice of Intervene(2014)
 - [Exhibit 14](#) (CSKT Notice of Conveyance (2014)
 - [Exhibit 15](#) (CSKT Apply Partial License Transfer 4-14-15)
 - [Exhibit 16](#) (Jackson Files Motion to Intervene 5-30-14)
 - [Exhibit 17](#) (Jackson Cov Ltr w/Motion toInterven 5-30-14)
 - [Exhibit 18](#) (FERC Order Grants Jackson Interven 9-19-14)
 - [Exhibit 19](#) (FERC OrdApprovPPLMT-NWLicTra 7-24-14)
 - [Exhibit 20](#) (Jackson Request for Rehearing 8-22-14)
 - [Exhibit 21](#) (FERC Ord.Dismisses Rehearing Req. 9-19-14)
 - [Exhibit 22](#) (Jackson Req. Reclarify of Dismissal 9-24-14)
 - [Exhibit 23](#) (FERC Responseto Jackson Reclarify 10-29-14)
 - [Exhibit 24](#) (FERCOrd.CSKT-EKIExemptPubUtil 12-8-14)
 - [Exhibit 25](#) (MRWRCC SignsCSKTWaterCompact 1-12-15)
 - [Exhibit 26](#) (NWestern Instruments of Conveyance 1-13-15)
 - [Exhibit 27](#) (CSKT-NW Apply Partial Lic.Transfer 4-14-15)
 - [Exhibit 28](#) (Keenan-Jackson Intervene-PartialLic. 5-26-15)
 - [Exhibit 29](#) (CSKT-EKI Response to Intervenors 6-9-15)
 - [Exhibit 30](#) (CSKT Water Claims Filed - If NO Compact)
 - [Exhibit 31](#) (CSKT Water Claims Filed - If YES Compact)
 - [Exhibit 32](#) (FERC Approv. NW Drought Mgt Plan 7-1-15)
 - [Exhibit 33](#) (Keenan-JacksonResponse-CSKT-EKI 7-15-15)
 - [Exhibit 34](#) (Pointer Kerr Proj.No.5 - FERC Interv 11-3-98)
 - [Exhibit 35](#) (Pointer Kerr Proj.No.5 -FERCPhone 12-21-98)
 - [Exhibit 36](#) (Pointer Kerr Proj.No.5 -FERC Interv 2-19-99)
 - [Exhibit 37](#) (Pointer Kerr Proj.No.5 -FERC Phone 06-05)
 - [Exhibit 38](#) (Pointer Kerr Proj.No.5 -Conveyance 8-24-15)
 - [Exhibit 39](#) (FERCOrderApprovPartial Lic Transfer 9-1-15)
 - [Exhibit 40](#) (CSKTFlathead Dams-ReservoirsOwned-8/12)
 - [Exhibit 41](#) (Turkey Outreach Efforts to Tribes 2008-2015)
 - [Exhibit 42](#) (Congressman Cole Testimony - H.R. 2362)
 - [Exhibit 43](#) (TAC Pres. McCurdy Testimony - H.R. 2362)
 - [Exhibit 44](#) (Turkey - Media Articles of Interest 2012-2015)

- [Exhibit 45](#) (IndianReservationsChosenbyTurkeyBusiness)
 - [Exhibit 46](#) (DOD-Rel. Uranium Mines Locator Rpt 2014)
 - [Exhibit 47](#) (DOD-Rel. Uranium Mines Rpt to Cong 2014)
 - [Exhibit 48](#) (Los Alamos Labs Rpt - Uranium Flathead)
 - [Exhibit 49](#) (Dry Fork Creek Ref. No. 304748)
 - [Exhibit 50](#) (Dry Fork Creek Ref. No. 304747)
 - [Exhibit 51](#) (Kalispell West (25 miles) Ref. No. 304712)
 - [Exhibit 52](#) (Kalispell West (25 miles) Ref. No. 304712-a)
 - [Exhibit 53](#) (Kalispell West (25 miles) Approx. Ref. - A)
 - [Exhibit 54](#) (Kalispell West (25 miles) Approx. Ref. - B)
 - [Exhibit 55](#) (Kalispell West (25 miles) Approx. Ref. - C)
 - [Exhibit 56](#) (Flathead Lake W.(9-12 miles) Ref. No. 303394)
 - [Exhibit 57](#) (Flathead Lake W.(9-12 miles) Ref. No. 303396)
 - [Exhibit 58](#) (Flathead Lake W.(9-12 miles) Ref. No. 303398)
 - [Exhibit 59](#) (Flathead Lake W.(9-12 miles) Ref. No. 303387)
 - [Exhibit 60](#) (Smith Lake North (6 miles) Ref. No. 303365)
 - [Exhibit 61](#) (Flathead Lake East Ref. No. 303502)
 - [Exhibit 62](#) (Flathead Lake East Ref. No. 303506)
 - [Exhibit 63](#) (Flathead Lake East Ref. No. 303509)
 - [Exhibit 64](#) (USGS Water Res. Rpt Jefferson Cty, MT 2007)
 - [Exhibit 65](#) (MBM Abandoned FlatheadForestMines 2002)
 - [Exhibit 66](#) (DOI-BIAMemo-IndianRacialPreference 1973)
 - [Exhibit 67](#) (GAO Rpt-Indian Irrig.Proj.Def. M&O\$ 2006)
 - [Exhibit 68](#) (GAO Testimony Re GAO 2006 Report 2015)
- [Court Order Denying TRO Motion](#) (9/4/15, 9:00 pm)
 - [DOJ Motion for 7-day Time Extension](#) to Oppose PI (9/8/15)
 - [DOJ Correction of Motion](#) for 7-Day Time Extension (9/9/15)
 - [Plaintiffs' Consent to & Correction of DOJ Motion](#) (9/12/15)
 - [Plaintiffs' Vol. Withdrawal of Suit Without Prejudice](#) (10/13/15)

Since the withdrawal of the Kerr Dam lawsuit, some additional evidence has been adduced that can be used in a future lawsuit to reverse the dam transfer.

These include CSKT Annual Reports and Quarterly Newsletters revealing the Tribes' uranium mill tailings cleanup expertise, contracts with the Saudi Arabia military, and embrace of Turkish investment on Reservation lands outreach activities:

- CSKT [2009 Annual Report](#), p. 27
- CSKT [2010 Annual Report](#), pp., 2, 8
- CSKT [2011 Annual Report](#), p. 31
- CSKT [2012 Annual Report](#), p. 32
- CSKT [2013 Annual Report](#), p. 33
- CSKT [Group Spirit 01-2011](#), p. 1
- CSKT [Group Spirit 03-2013](#), p. 11
- CSKT [Group Spirit 01-2014](#), pp. 3, 7, 9
- CSKT [Group Spirit 03-2014](#), p. 2

- CSKT [Group Spirit 02-2015](#), p. 8
- CSKT [Group Spirit 03-2015](#), p. 3, 6-7

The following new additional and relevant information has since come to light:

- CSKT [Group Spirit 04-2015](#), pp. 1, 3 (Savannah Nuclear Site Contract)
- Turkey and the Bomb ([The National Interest](#))
- [Electric Lines MT to Idaho Falls, ID](#) (Idaho Nat'l Laboratory - Nuclear Enrichment & Reprocessing)
- "[Highly Questionable Turkey, Open Border & Greater Tribal Sovereignty Policies Together Undermine U.S. National Security](#)," a Working Paper, available on SSRN website (Dec. 15, 2015)
- "[Opinion: More Questions About Turkey's Role in Tribal Issues](#)," Montana Daily Inter Lake (Dec. 20, 2015)
- "[Setting the Record Straight About Our Kerr Dam Lawsuit and Turkey](#)," Western Ag Reporter (Dec. 24, 2015)
- [London Book Review of "Military to Military," by Seymour Hirsch](#)
- CSKT Char-Koosta News – "[Learn About Islam on April 8 From the Flathead Reservation Human Rights Coalition](#)"

Several days following the temporary withdrawal of the lawsuit, a small group of other Montana farmers and ranchers operating on the Flathead Indian Reservation courageously concluded that the [Flathead Joint Board of Control](#) ("FJBC") did not adequately represent the interests of the Flathead, Mission and Jocko Valley Irrigation Districts and their members, and sought to participate (intervene as of right) in the "confidential" nonpublic settlement conference proceedings the Federal Energy Regulatory Commission ("FERC") had ordered upon the irrigators' petition in May 2015. FERC had ordered these proceedings convened in lieu of the public hearing required by the Kerr Dam license for the irrigators, the Tribes and the Interior Department to address the terms and conditions for continuing to secure the low-cost block of electric power ("LCB") the dam license had long guaranteed to irrigators and other residents of the Flathead Irrigation Project in exchange for their valuable non-consumptive water rights. The outcome of these negotiations/hearings which still continue will determine the economic value of the LCB/irrigators' water rights for the remaining 20 years of the Kerr Dam license.

Despite the irrigators' right to intervene in these proceedings, their action provoked a hailstorm of opposition from the FJBC, other irrigators partial to it, and from the DOI and FERC. The following documents tell the story of how the government and their operatives worked to pit irrigator against irrigator:

- 10/21/15 - Filed [Motion to Intervene Out-of-Time](#) with FERC
- 11/5/15 - Filed [1st Supplement to Motion to Intervene](#)
 - [Exhibit 1](#) (DC Bar Rules of Professional Conduct)
 - [Exhibit 2](#) (Ltr. to DC Counsel re FJBC Intimidation Calls)
 - [Exhibit 3](#) (Ltr. to MT Counsel re Redacted Email & Mtg)
 - [Exhibit 4](#) (First Offer of Withdrawal of Motion)
 - [Exhibit 5](#) (Second Offer of Withdrawal of Motion)
- 11/6/15 - FJBC Files [Answer Opposing Motion to Intervene](#)

- 11/10/15 - Filed [2nd Supplement to Motion to Intervene](#)
 - [Exhibit 1](#) (FJBC public website showing no info.)
 - [Exhibit 2](#) (FJBC contract representing Districts 2014)
 - [Exhibit 3](#) (MCA -Irrig. Districts are Public Benefit Corps)
 - [Exhibit 4](#) (MCA -Formation & Responsibilities of FJBC)
 - [Exhibit 5](#) (MCA -Ethics-Conflict-of-Interest-Public Input)
 - [Exhibit 6](#) (FJBC Public Hearing Petition to FERC 5-2015)
 - [Exhibit 7](#) (DC Counsel Notice of Opposition to Motion)
 - [Exhibit 8](#) (MCA -Fed'l & Indian Reserved Water Rights)
 - [Exhibit 9](#) (Dr Kate Presents to MT Legis. WPIC CCTWG)
 - [Exhibit 10](#) (EKI Transmit Agmt w/Mission Valley Power)
 - [Exhibit 11](#) (DOI SolGen'l Ltr re CSKT-MVP '638 Contract)
 - [Exhibit 12](#) (MVP GM Notes - Reservation Energy Mix)
- 11/13/15 FJBC Files Motion for [Answer to 2nd Supplement](#)
- 11/13/15 [FERC Chief Admin Law Judge Order Denying Motion](#)
- 11/30/15 [Motion to Permit Appeal to Commission of ALJ Order](#)
 - [Attachment 1](#) (Jensen testimony 1985)
 - [Attachment 2](#) (Willman affidavit 2015)
 - [Attachment 3](#) (Brockway affidavit 2015)
 - [Attachment 4](#) (Erb affidavit 2015)
 - [Attachment 5](#) (Vallejo affidavit 2015)
- 12/2/15 [FERC Order Denying Appeal of Denial of Intervention](#) (same Judge)

Since the irrigators ended their intervention effort, the actions taken by the FJBC's Washington D.C. Counsel at the FERC public hearing proceedings have, once again, caused major concern among Flathead irrigators. These concerns focused, in particular, on the FJBC D.C. Counsel's failure, in her May 2015 petition, to call for the broadest scope of administrative law judge review possible of Kerr Dam license Article 40(c) issues. These issues concern both the value of the LCB and corresponding irrigator non-consumptive water rights, as well as, the right of the United States to remain the exclusive provider of electricity on the Flathead Indian Reservation, and the terms and conditions of such delivery to reservation irrigator and non-irrigator households, schools, religious institutions, municipalities and businesses, as set forth in a [specially prepared legal memorandum](#).