

## **ATTACHMENT 3**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Confederated Salish and Kootenai Tribes	)	Docket No. P-5-100
Energy Keepers, Incorporated	)	
	)	

**AFFIDAVIT OF DEAN BROCKWAY**

STATE OF MONTANA	)
	)
County of Lake	)

Dean Brockway, being first duly sworn upon oath, deposes and says:

1. I am a citizen of the United States, a resident of the State of Montana, of legal age and I am competent to be a witness. I am percipient and if called upon to testify could testify to the following, all of which are within my own personal knowledge.
2. I am an individual residing on the Flathead Indian Reservation ("FIR"). I operate and manage a ranch/farm on fee land that I own on the FIR. I am an irrigator and a member of the Jocko Irrigation District.
3. I make this affidavit of my own accord and do not speak for any other individual or entity.
4. I recently learned that Boone Cole, Chairman of the Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts ("FJBC/Districts" or "the Board") prepared and signed an affidavit dated, November 13, 2015, which was included in the November 13, 2015 Federal Energy Regulatory Commission ("FERC") filing the FJBC/Districts made in connection with the low-cost block of power matter. Mr. Coles' affidavit was apparently intended to cast a negative light on the Motion to Intervene that I, along with other irrigators and residents of the FIR, had requested attorney Lawrence Kogan to prepare and file on

our behalf. This affidavit, which is attached as EXHIBIT 1, contains several untrue statements that I wish to bring to light.

5. Paragraphs 11 and 12 of Mr. Cole's affidavit untruthfully portrays me as not understanding attorney Kogan's motion to intervene. In paragraph 11, Boone Cole states that he "spoke independently" with me and "inquired as to [my] level of understanding of attorney Kogan's motion to intervene, particularly since it contained so many factual errors and did NOT reflect the Joint Board's position as it purported to do." Then, in paragraph 12, the Cole affidavit untruthfully portrays me as "[having] no idea what had been filed, or even that anything had been filed" at all. Mr. Cole's affidavit, furthermore, untruthfully portrays me as being uncertain of whether I consented to attorney Kogan's representation to begin with. I am certain that Mr. Cole's affidavit was maliciously intended to give FERC the impression that I am not able to understand these "complex" matters or to manage my affairs as he does his affairs because of his "higher" education and professional engineering degree. Mr. Cole is both arrogant and mistaken.

6. I, along with other of attorney Kogan's clients, were very concerned that the Board had not been up front about what precisely they were negotiating and why it was important to irrigators. The Board also had been very secretive regarding how it planned to achieve its negotiating goals and objectives. And, the Board refused to discuss with irrigators the relationship between our water rights, federal and tribal water rights and the low-cost block of power. Before we asked attorney Kogan to file the intervention, each time we and other irrigators had questioned the Board about this relationship and their negotiating goals and objectives, we received the following answers: the relationship was "not relevant," the goals and objectives were "privileged and confidential" and we had to "trust them." I can honestly say that I did not and still do not feel comfortable with the Board's answers to these questions. In fact,



as I have come across new information, I am more disturbed by the Board's answers than I was before. It is my understanding that other of attorney Kogan's clients feel the same way. I and others had asked attorney Kogan to file a motion to intervene that strongly represented irrigator interests, which he did.

7. Contrary to the statements contained in Boone Cole's affidavit, I am fully aware of what the Board has done and is doing. For example, I am aware how he and other Board Commissioners working closely with him, with advice from their lawyers, are hiding important facts from most District members. The previous Board on which Mr. Cole served and their lawyers had done the same thing. That dysfunctional Board terminated in 2013, and it quickly resulted in the U.S. Bureau of Indian Affairs taking back management control and operation of the Flathead Irrigation Project from the Board at irrigators' expense. Mr. Cole and his "loyal" Commissioners seem to have forgotten what happens when a Board acts in a secretive manner and fails to satisfy its obligation under state law to openly and honestly represent ALL District members on important matters concerning the federal government. As a Board Commissioner, I take this responsibility VERY seriously. That is why I, along with other irrigators, had asked attorney Kogan to strongly represent our interests by filing the motion to intervene he filed with FERC on October 21, 2015.

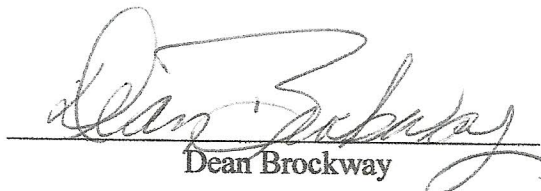
8. I also am fully aware of how the Board failed to represent our interests strongly. For example, Boone Cole and his "loyal" Commissioners employed a Washington, D.C. lawyer, at the recommendation of Dr. Kate Vandemoer, a hydrologist specializing in protecting federal and tribal reserved water rights. The Board hired her as an "informal adviser" without District member input, and refused to discuss her background and experience with District members. Furthermore, I am aware how this "adviser" and the lawyer she selected are now negotiating, on

the Board's behalf, the low-cost block of power with the Confederated Salish and Kootenai Tribes ("CSKT") and the U.S. Department of Interior in secret settlement conference proceedings even though the 1985 Kerr Dam license called for public hearings to discuss this issue. Moreover, I am aware how these Board representatives are negotiating under the presumption that the U.S. government owns, for itself and/or for the CSKT, priority federal reserve rights to the use of all of the waters on the FIR and on the Flathead Lake and River. What most irrigators did not realize until the November 2, 2015 Board meeting, however, was that the Board agrees with the federal government position. This explains why we irrigators are being treated only as junior water users not entitled to be compensated for CSKT and federal government use of what are rightfully our appurtenant water rights.

9. In summary, paragraphs 12 and 13 of the Cole affidavit arrogantly portray me as confused and unable to make the informed decisions that only he and his loyal Commissioners can make. This is not only personally insulting to me, but it also is dishonest. When Boone Cole found out that attorney Kogan filed the motion to intervene on the behalf of dissatisfied irrigators, including me, he quickly became very angry that his authority had been challenged. He then immediately pressed me and the others to withdraw the intervention or else he and his loyal Commissioners would resign from the Board. As a United States Veteran, I am fully familiar with the use of such strong-arm tactics. Therefore, I knew that he wouldn't resign when we failed to give in.

Further your affiant says not.

Dated: 11-30-2015  
MM/DD/YY

  
Dean Brockway

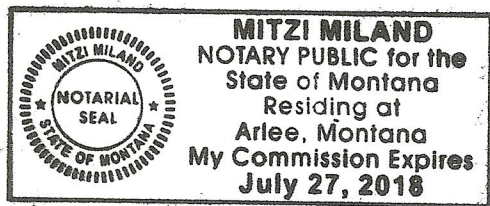
STATE OF MONTANA  
COUNTY OF LAKE, ss.

Personally appeared the above-named Dean Brockway.

And made oath that the above facts are true upon his personal knowledge, information and belief and, to the extent that they are based upon information and belief, he swears that he believes them to be true.

Dated 11.30.15  
(MM/DD/YY)

Mitzi Miland  
Notary Public  
7.27.2018  
My Commission Expires  
Mitzi Miland



# **EXHIBIT 1**



**UNITED STATES OF AMERICA**  
**BEFORE THE**  
**FEDERAL ENERGY REGULATORY COMMISSION**

Confederated Salish and Kootenai Tribes  
Energy Keepers, Incorporated

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Project No. P-5-100

**AFFIDAVIT OF BOONE COLE**

STATE OF MONTANA

)

County of Sanders ) ss:

Boone Cole, being first duly sworn upon oath, deposes and says:

1. I am a citizen of the United States; a resident of the State of Montana, of legal age and I am competent to be a witness. I am percipient and if called upon to testify could testify to the following; all of which are within my own personal knowledge.

2. I am an individual residing on the Flathead Indian Reservation ("FIR"). I am a rancher and own fee land on the FIR; I am an irrigator, a member of the Jocko Irrigation District; I am the Chairman of the Board and as such am a member of the Executive Committee of the Flathead Joint Board of Control ("FJBC").

3. I make this affidavit of my own accord and do not speak for any other individual or entity, including the irrigation districts and FJBC.

4. I am very familiar with the Flathead Irrigation Project's [the "Project"] history and with the issues surrounding Project operations. I am also very familiar with the Low Cost Block of Power ("LCB") and Net Power Revenues ("NPR"), and their associated issues, including the issues involved in the above captioned action.

5. Both LCB and NPR are vital to the continued viability of the Project and the irrigators who make their living on farms and ranches served by the Project.



6. I am providing this Affidavit in response to the Supplemental pleadings filed on October 5, 2015 and November 10, 2015, by attorney, Lawrence A. Kogan's on behalf of TED HEIN, DEAN BROCKWAY, BUFFALO WALLOW LLC, WESTERN WATER USERS ASSOCIATION LLC, GENE ERB, JR., PAUL A. and BARBARA GRIECO, MARY K. MATHEIDAS, R. ROY and SHEILA M. C. VALLEJO.

7. Although I do not know the Matheidas, I consider each of the remaining individuals named in the preceding paragraph to be a friend.

8. I understand that the following are the "clients" that have severed their relationship with Mr. Kogan, at least with respect to the above captioned action, and have withdrawn as intervenors:

- Linda Ambo;
- Gary and Sandy Baertsch;
- Charley and Carol Lyons;
- Robert and Erlene Robinson; and
- Ray L. and E. Anne Swenson.

9. I am personally very concerned with the positions taken by attorney Kogan and have been outspoken regarding my concerns, both at FJBC Board meetings and in conversations that I have had with friends and other irrigators who will ultimately be impacted by these proceedings.

10. I was especially concerned when I saw the names of the individuals attorney Kogan named as intervenors in this action. I did not believe that those individuals understood the positions that attorney Kogan was taking and did not understand what could and could not be addressed in these proceedings.

11. I took it upon myself, at no one's direction, to speak with some of the individuals named as intervenors. On October 23, 2015, I spoke with Carol Lyons, Sheila Vallejo, Dean Brockway and Ted Hein regarding Kogan's attempted intervention in the FERC proceeding. I visited with Ray Swenson on November 2, 2015. I spoke independently with Ted Hein and Dean Brockway and inquired as to their level of understanding of attorney Kogan's motion to intervene, particularly since it contained so many factual errors and did NOT reflect the Joint Board's position as it purported to do. Additionally, I expressed to them the potential damage that I firmly believed the intervention could do to the Board's efforts before FERC.

12. Dean Brockway assured me that he had no idea what had been filed, or even that anything had been filed. His only connection was that he had been a party to the earlier action by attorney Kogan regarding the transfer of Kerr Dam to the CSKT. He had not seen any documents or consented to be party to this action. I understand that he has since consented to attorney Kogan's representation.

13. Both the Lyons and the Vallejos, who are dear friends of mine, had already heard of the fallout of attorney Kogan's attempted intervention by the time I talked to them. They were very apologetic and remorseful for having any part in anything that was counterproductive to the Board's efforts in any way. Both have been staunch supporters of the Board. They both assured me that they were told that attorney Kogan would only be "supporting the Board's efforts" and in general they thought he was working with the Board. Neither knew about this particular action or had seen any of the documents that attorney Kogan filed.

14. Ray Swenson, also told me that he had not seen the documents that were filed.

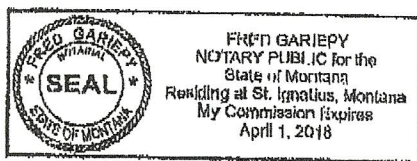
15. I consider all of the individuals with whom I spoke to be friends, and I certainly never used any "Mafia" tactics as attorney Kogan suggests.


16. I was not directed by any of the Board's attorneys to do or say anything to any of the individuals with whom I met. I did not believe that the intervenors had been provided with good information from attorney Kogan, and wanted to make sure that they each understood my concerns. I acted on my own meeting and speaking with those individuals. I was not acting on behalf of the Board or the Board's attorneys, although I know that they share many of my same concerns.

Further your affiant says not.

  
Boone Cole

SUBSCRIBED AND SWORN to before me this 13th day of November, 2015.



  
SIGNATURE  
Fred Gariepy  
Print or Type Name  
Notary Public for the State of Montana,  
Residing at St Ignatius, Montana  
My commission expires: April 1, 2018  
MONTH, DAY, YEAR (201\*)