



# MONTANA STATE SENATE

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**May 29, 2014**


**Honorable Kimberly Bose**  
**Secretary, Federal Energy Regulatory Commission**  
**888 First Street, N.E.**  
**Washington, D.C. 20426**

Re: Kerr Hydroelectric Project, FERC No. P- 5-094; Motion to Intervene

Dear Secretary Bose:

On behalf of the numerous public interests represented in the signature line below, I respectfully request that the Federal Energy Regulatory Commission grant my attached Motion to Intervene in the matter of the issuance of a FERC license to NorthWestern Corporation for the Kerr Project. My Senate District consists of 2/3 of Flathead Lake and extends down the east shore of the same into Lake County. As such I represent irrigators, business interests on and surrounding Flathead Lake; fishing, sports and recreational interests; and thousands of citizens who rely on Flathead Lake and the regulation of Kerr Dam to support businesses, families, and communities. I also am an irrigator with direct flow rights out of the Flathead River which I use to irrigate my hay. I and the interests represented in this letter will be directly impacted by decisions surrounding the operation, management, and ownership of Kerr Dam.

I propose this intervention at this particular juncture in the process so as **to assure that the numerous public interests in this facility can be represented and so FERC's actions can have the most benefit for the public at large.** I oppose the issuance of the Kerr FERC license to the CSKT at this time because it is premature. I also oppose the issuance of the FERC license for Kerr Dam to the NorthWestern Corporation (NorthWestern) as long as the CSKT transfer provision from the previous owner, PPL-Montana, remains unchanged and unconditioned.

The Kerr Project is the largest of the facilities to be purchased by NorthWestern, generates the most electricity, and provides the most storage. Indeed, it is the largest hydropower facility in western Montana. The development of the Kerr Project is inextricably linked to irrigation, power, and the economic development of surrounding communities, recreation, and fishing. Large scale regional interests, including flood control, agricultural industries, hydropower generation, environmental protection, and endangered species signify that the Kerr Project is just one facility in an interconnected network affecting hundreds of thousands of people, billions of dollars of economic activity, and a multi-billion dollar infrastructure supporting a network of integrated, regional, economic activity. 

The proposed issuance of the FERC license to NorthWestern which includes the transfer provision as written may be improper because the CSKT cannot yet meet the requirements of the Section V (C)(1) of the 1985 FERC license that contained the transfer provision. The transfer of the FERC license for this facility to the Confederated Salish and Kootenai Tribes will be the first hydropower facility in the nation to be owned and operated by a Tribe. While this is an exciting development, it is not well thought out in terms of the potential impacts to the large non-Indian population and regional economic activity that has relied upon the benefits produced by Kerr Dam for the last eighty-four years.

Several significant questions come to mind:

1. Does FERC have the requisite authority to issue a license for a private facility that serves the public at large with a transfer provision that allows its sale to a sovereign Tribal government which is unaccountable to the general public, state law, or the state constitution? Is Congressional approval needed for transfers and licenses to similar “foreign” entities?
2. Under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, Indian Tribes are granted the ability to take over the management and operation of federal facilities if these facilities were built for the Tribes because of their status as Indian Tribes. The CSKT have tried and failed to take over the Flathead Irrigation Project under a “638 Contract” because it was not built solely for the Tribes. Since Kerr Dam was built to support both the general public including irrigators and the Tribes, is its operation and maintenance through a FERC license legally proper and permissible?
3. Should and can the NorthWestern FERC license be issued for Kerr Dam without reference to the Transfer provision?
4. When the CSKT purchases Kerr Dam, can the FERC license be conditioned to reflect requisite obligations implemented by previous licensees?

The attached Motion to Intervene provides additional detail on these questions for your reference and information.

In summary, we seek FERC’s careful deliberation in the issuance of a Kerr Dam license to NorthWestern Corporation regarding in particular the transfer provision to the CSKT. We urge FERC to not provide the license to the CSKT until the dam purchase has been completed. At that time we urge FERC to consider conditioning the CSKT Kerr Dam FERC license so as to minimize the disruption to and destruction of the local and regional economies.

I am happy to provide much more detailed information for your use as these proceedings continue.

Sincerely yours,

/s/ Verdell Jackson

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Senator Verdell Jackson-Flathead & Lake Counties,  
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Co- Signed by:

Senator Janna Taylor—Lake County

Senator Jennifer Fielder—Sanders County

Representative Jerry O’Neil-Flathead County

Representative Keith Regier-Flathead County

Senator Jon Sonju-Flathead County

Senator Dee Brown-Flathead County

Representative Randy Brodehl-Flathead County

Representative Kerry White-Gallatin County

Representative Nancy Balance-Ravalli County

Representative Steve Lavin-Flathead County

Representative Mark Blasdel-Flathead County, Speaker of Montana House

CC: Montana Attorney General Tim Fox  
Montana Public Service Commission  
Douglas Johnson, FERC Regional Engineer  
Nathaniel J. Davis, Deputy Secretary