

**Acquisition of
the Kerr Hydroelectric Project by
The Confederated Salish and Kootenai Tribes**

Tribal Energy by Design

Developing an Energy Roadmap on Tribal Lands

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CSKT History

- Aboriginal Tribes: Salish, Upper Pend d'Oreilles, Kootenai
- Aboriginal Territory: Parts of Alberta, British Columbia, Idaho, Montana, Washington, Wyoming
- Ceded Territory: Western Montana
- Organic Laws
 - Treaty of Hellgate - July 16, 1855
 - Treaty of the Upper Missouri - October 17, 1855
 - CSKT Constitution – October 28, 1935



Hellgate Treaty

“There is ... reserved from the lands ... ceded, ... the tract of land included within the following boundaries, [geographic description of Flathead Reservation]. All of which shall be set apart ... for the exclusive use and benefit of said confederated tribes as an Indian reservation.” *Treaty of Hellgate*, Art. II, 12 Stat. 975, July 16, 1855.

“The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory ...” *Treaty of Hellgate*, Art. III, 12 Stat. 975, July 16, 1855.

Flathead Indian Reservation 2014



Indian Reorganization Act of 1934

- Section 16: federal recognition for Indian tribal rights to exercise sovereign authority pursuant to constitutional representative governments; 25 USC § 476
- Section 17: federal authority for Indian tribes to charter corporations for the purpose of conducting economic activities; 25 USC § 477

CSKT Government

- Homeland: Flathead Indian Reservation; 1,310,000 acres
- Headquarters: Pablo, Montana
- Tribal members ≈ 7,900
- Annual Budget ≈ \$115,000,000
- Full-time Employees ≈ 1,200
- Part-time & Seasonal employees ≈ 600
- Government Agencies ≈ 30

Tribal Council	Historic Preservation	Peoples' Center
Salish Culture	Kootenai Culture	Economic Affairs
Personnel	Payroll	Credit Union
Education	Health & Human Services	Human Resources
Housing Authority	Salish Kootenai College Social Services	
High School	Early Childhood Services	Language School
Lands	Forestry	Energy
Natural Resources	Job Corps	Court
Prosecutors	Defenders	Victims Assistance
Police	Legal	Administration



CSKT – Tribal Resources

- The Tribes preserved the Flathead Indian Reservation as a permanent homeland for Tribal people by the terms of the Hellgate Treaty of 1855.
- The Reservation is 1.317 million acres in size. Although the Reservation was opened to non-Indian settlement as a result of historic federal policies, CSKT has diligently protected its ownership interests and diligently pursued reacquisition of federally-divested interests so that CSKT now owns over 70% of Reservation lands including the bed and banks of the south half of Flathead Lake.
- The Reservation is located in the mountains and valleys of Northwest Montana in the upper Columbia River Basin.
- CSKT also reserved the right to continue to access, use, and protect traditional resources of importance to them throughout their aboriginal territory



CSKT Businesses

- Mission Valley Power: electrical utility; 20,000 customers; \$21.6M revenue
- S&K Electronics: 6 small businesses; technical consultants, engineering consultants, aerospace consultant, worldwide inventory/parts services, environmental restoration
- S&K Electronics: high tech manufacturing
- BW KwaTaqNuk Resort: hospitality services and gaming
- Gray Wolf Peak Casino: gaming
- Energy Keepers, Incorporated: Kerr Dam operations/marketing
- Eagle Bank: 1,100 deposit accounts @ \$24M; 750 loan accounts @ \$12M
- S&K Gaming: Gray Wolf Peak Casino & KwaTaqNuk Resort
- Flathead Stickers & Lath: wood products



CSKT Energy Policies

- 1. Generate, transmit, and distribute energy products so as to:
 - a. serve the energy needs of the Tribes and Tribal members now and in the future;
 - b. improve the living conditions of Tribal members; and
 - c. create economic benefits for the Tribes.
-
- 2. Invest Tribal funds and resources in energy activities that will strengthen the Tribes ability to:
 - a. provide resources for the basic needs of Tribal membership (e.g. child care, education, health care, elder care);
 - b. promote Tribal sovereignty (e.g. acquire reservation land, diversify sources of revenue, endow cultural preservation programs).
-
- 3. Implement Tribal energy activities in a way that is consistent with and supportive of responsible Tribal stewardship of:
 - a. the land;
 - b. natural resources;
 - c. environmental quality; and
 - d. the developed and undeveloped landscape.
-
- 4. Implement Tribal energy activities that provide economic opportunity to Tribal members in the form of:
 - a. employment;
 - b. contracting for goods and services;
 - c. production and sale of energy resource commodities and facilities; and
 - d. entrepreneurial enterprises.
-
- 5. Implement Tribal energy activities through business organizations:
 - a. that integrate Tribal culture and history into its management and operations;
 - b. that ameliorate the Tribes' financial risks; and
 - c. that promote a safe and healthy workplace.

CSKT Energy Resources/Opportunities

- Oil / Gas / Coal NA
- Solar Limited Seasonally/Uneconomic
- Wind Limited / Dispersed /Marginally Economic
- Geothermal Limited/Uneconomic
- Biomass Reservation & Regional/Economics Under Review
- Co-Generation w/Biomass & LNG Limited access/Uneconomic
- Small Hydro Limited Locations/3 Economically Viable Projects
- Pumped Storage One location/Engineering challenge/Uneconomic
- Large Hydro New Flathead River Projects/Unacceptable
Kerr Project/Economically Viable/First Priority

Federal Power Act of 1920

(as amended)

- Congress established the Federal Power Commission (FPC) to coordinate hydroelectric projects under federal control; In 1977, Congress reorganized several energy-related agencies into the DOE, including the FPC, and renamed it the Federal Energy Regulatory Commission
- FPA Part I is a statute of general application. It applies FERC's jurisdiction over development of water power and navigation.
- FPA Part II is not a statute of general application. It applies FERC's jurisdiction to regulate electric utility companies engaged the sale of power at the wholesale level and in interstate commerce.
- Indian tribes and tribally-owned corporations are generally considered to be exempt public utilities under Part II of the FPA. (e.g. Sovereign Power [Spokane Tribe), Warm Springs Power Enterprise, and CSKT/Energy Keepers, Inc [pending].

Federal Energy Regulatory Commission

- Independent Regulatory Agency
- Five Member Commission
 - Appointed by President
 - Five year term of office
 - Confirmed by the Senate
 - Chairman designated by President
 - Current members:

• Cheryl A. LaFleur (Chairman)	2010	[2019]	MA
• Phillip D. Moeller (Commissioner)	2006	[2015]	WA
• Tony Clark (Commissioner)	2012	[2016]	ND
• John R. Norris (Commissioner)	2010	[2017]	IA
• Norman C. Bay (Commissioner)	2014	[2018]	NM

FERC Jurisdiction

- Navigable Waters of the U.S.
 - Was, is, or could be made navigable at project site
 - Interruptions elsewhere on stream irrelevant
 - Includes ocean
- Federal Lands or Reservations
 - National forests
 - Indian reservations
 - BLM lands
- Government Dams
 - Corps of Engineers Locks and Dams
 - Bureau of Reclamation Dams (FERC-BOR Jurisdiction Memo)
- Non-navigable Waters, Affects Interstate Commerce, and Post-1935 Construction
 - Small projects
 - Post-1935 – repair v. reconstruction

FERC's Duties & Functions

- Mission Statement: Regulate and oversee energy industries in the economic, environmental, and safety interests of the American public.
- Regulatory Duties:
 - Licensing of hydropower projects
 - Generating utilities in the wholesale electricity market
 - Interstate transmission of electricity, natural gas, and oil
 - Construction of liquid natural gas terminals and pipe lines

Federal Power Act

Sections Relevant to Indian Country

- Section 4(e): authorizes federal land managers to condition licenses to ensure consistency with underlying purpose of affected federal reservations; 16 U.S.C. § 797(e).
- Section 10(e): authorizes FERC, subject to approval of the affected Indian tribe, to “fix a reasonable annual charge for the use” of an Indian reservation; 16 U.S.C. § 803(e).

Overlapping Jurisdiction

Related Federal Laws

- National Environmental Policy Act (NEPA)
- Endangered Species Act (ESA)
- Clean Water Act (CWA)
- Marine Mammal Protection Act (MMPA)
- Magnuson Stevens Act (MSA)
- Migratory Bird Treaty Act (MBA)
- National Historic Preservation Act (NHPA)
- McCarren Act/Amendment
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Treaties

Cushman Settlement



- Skokomish River, WA
- Tacoma Power
- Skokomish Tribal Nation / Skokomish Reservation
 - \$12.6 million one-time cash payment
 - 7.25 percent of the value of electric production from the Cushman No. 2 powerhouse
 - Transfer of land valued at \$23 million including the Camp Cushman on Lake Cushman, the 500-acre Nalley Ranch and Saltwater Park on Hood Canal
- Approved by FERC July 15, 2010; 8 parties; 40 yrs.

Klamath Settlement



- Klamath River, OR & CA
- PacifiCorp; relicensing proceeding
- Klamath, Yurok, and Hoopa Valley Tribes
- Settlement agreement signed in February 2010 among federal government, California, Oregon, PacifiCorp, and other parties.
- Removal of four dams by 2020 at a cost of \$450M [\$200 million customer surcharge + \$250 million from the sale of bonds in CA.]
- The Parties are preparing federal legislation to authorize decommissioning and removal of the dams.
- Klamath Tribes & Yurok Tribes = support settlement/restoration plan
- Hoopa Valley Tribe = sought 4(e) conditions in annual licenses, requested additional interim measures that were not included in the settlement, FERC denied @ 126 FERC ¶ 61,236 (2009); Federal appeals court denied @ Hoopa Valley Tribe v. FERC, - F.3d - , (DC Cir, Dec. 28,2010).

Wells Settlement



- Columbia River; WA
- Douglas County PUD
- Confederated Tribes of the Colville
- Fish passage structures
- Methow Hatchery @ \$1.241M annually
- Wells Hatchery @ \$1.135M annually
- \$13.5M payment + 466 acres of land + 4.5% of output until 2018 + 5.5% of output thereafter
- Relicensing underway

Pelton Round Butte Settlement



- Deschutes River; OR
- Portland General Electric
- Confederated Tribes of the Warm Springs Reservation
- Fish passage & hydro-thermo regulation tower \approx \$100M
- Additional fish mitigation \approx \$35M
- Confederated Tribes of Warm Springs own 33% share with right to purchase up to 51% share; PGE owns remainder
- Approved by FERC in 2005; 22 parties; 50 years

Kerr Hydroelectric Project



Kerr Hydroelectric Project



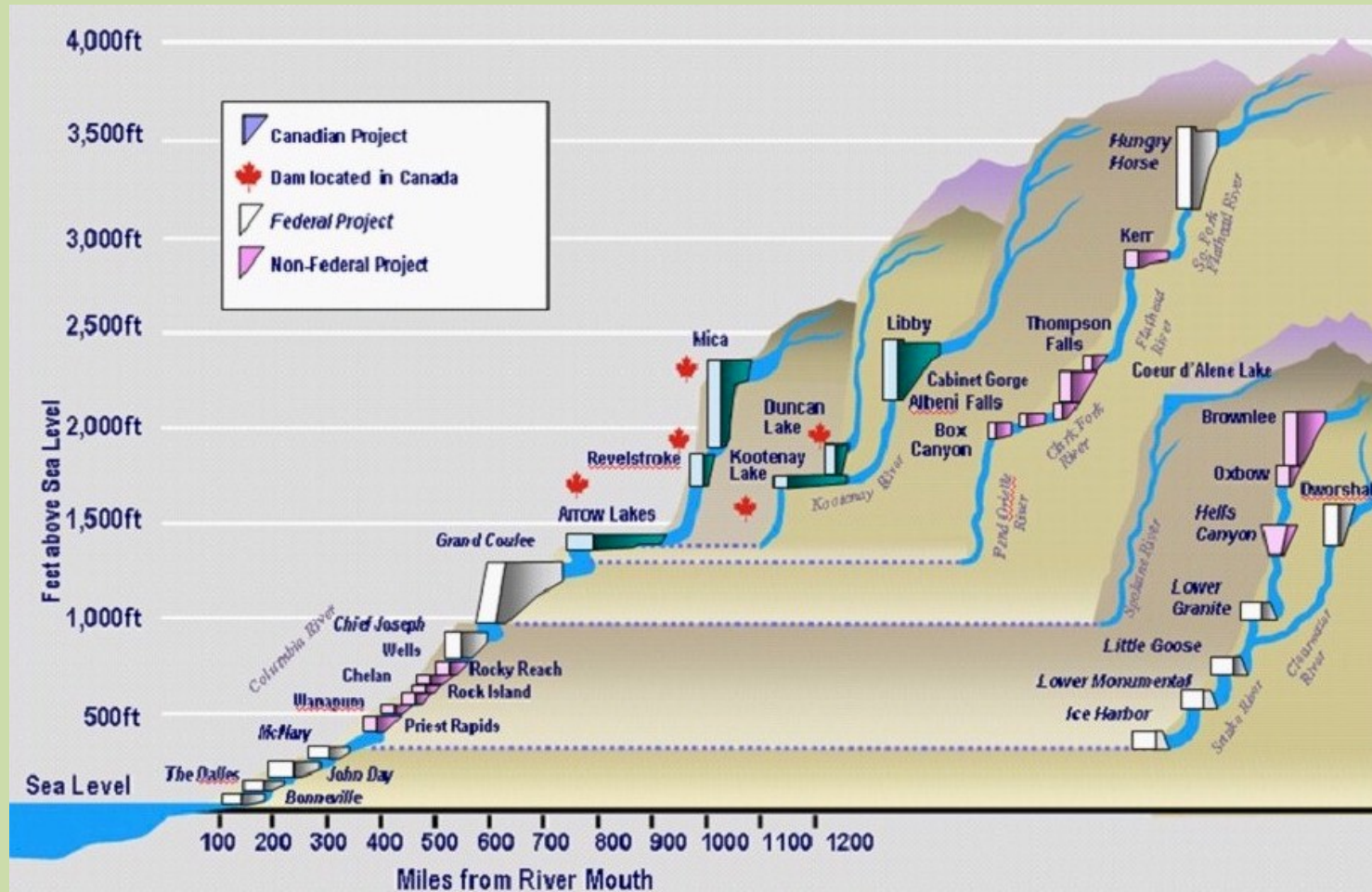
Project Description

- Dam: 200 ft high x 381 ft long, concrete arch structure w/14 spillway openings
- Retaining Wall: 185 ft long x 30 ft high concrete gravity section (i.e. right wing)
- Penstocks: 3 tunnels, each approximately 30 ft. diameter x 800 ft length w/ 189 ft head
- Powerhouse: 3 generating units rated at 58, 58, & 72 megawatts each
- Reservoir: 126,000 acre natural reservoir (i.e. Flathead Lake)

Columbia River Basin Hydroelectric Projects

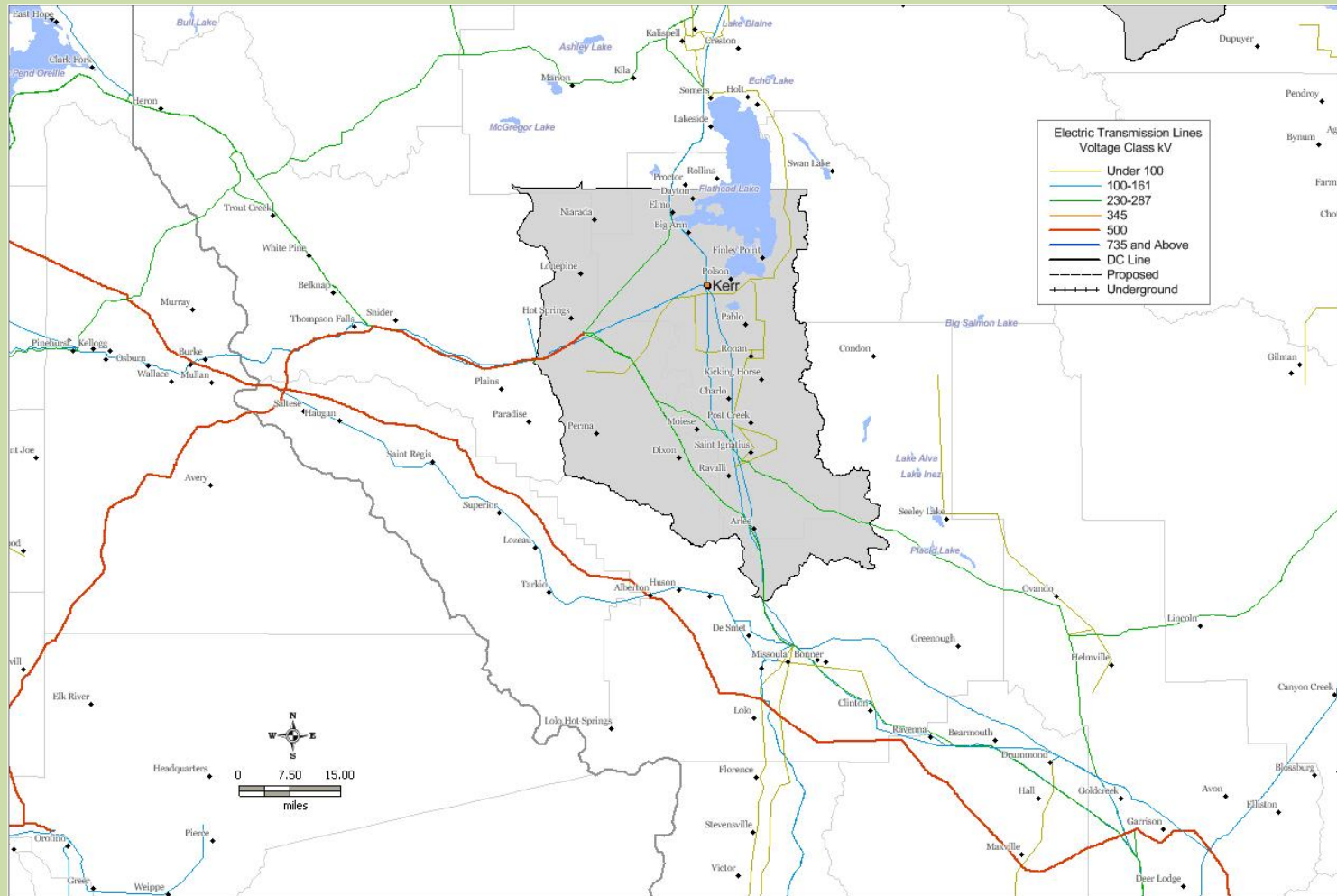


Kerr Project's Location within Columbia River Basin Hydro System



Kerr Project

Location within the Transmission Grid



CSKT – Kerr History



- The Kerr Project was developed as result federal assimilation polices implemented on the Flathead Indian Reservation from 1904-1934
 - Allotting of the land
 - Creation of the Flathead Indian Irrigation Project (irrigation and power)
 - Development of power sites by non-Indian business entities
- **1921** Applications are filed for licenses to develop five power sites on the Flathead River within the Flathead Reservation.
- **1930** The Federal Power Commission issued the first 50-year license to the Rocky Mountain Power Company for the Kerr Dam site.
- **1939** Rocky Mountain Power Company transferred its interest in the License to the Montana Power Company (“MPC”). Kerr Dam began producing power.
- **1976** CSKT filed a competing application with the Federal Energy Regulatory Commission (“FERC”) for relicensure of Kerr .
- **1980** The first license expired and FERC issued a series of one-year licenses to MPC.
- **1985** the Tribes successfully negotiate co-licensee status with the MPC and the option to acquire Kerr as the sole owner in 2015. New License issued to MPC and CSKT for a 50-year term through 2035.
- **1999** PPL Montana (PPLM”) acquires Kerr from MPC and FERC transfers MPC’s License interest to PPLM.
- **2010+** CSKT prepares to exercise its exclusive and unilateral right to acquire Kerr and create its energy enterprise
- **2014** CSKT gives formal notice establishing conveyance date for Kerr Project as of September 5, 2015

Kerr Project Environmental Mitigation

- Project Operations
 - Baseload
- Habitat Acquisition
 - Tribes assume obligation for acquiring 3089 acres of habitat over a five-year term applying USFWS Region 6 Wetland Mitigation Policy Guidance;
 - MPC:: Pays \$9,512,771 to Tribes; and Conveys 669 acres of Flathead Reservation properties to the U.S. in trust on behalf of the Tribes, or to the Tribes.
 - PPLM pays \$7,750,000 (5 x \$1,550,000 annually on 06/01 beginning 06/01/00) to Tribes.
- Habitat Restoration
 - Tribes assume obligation to perform fish and wildlife mitigation actions pursuant to terms of federally approved Fish and Wildlife Strategy.
 - MPC pays \$10,750,000 to the Tribes.
- Fish Supplementation
 - Tribes assume obligation to achieve fish stocking, supplementation and reintroduction in Flathead Lake and lower Flathead River.
 - MPC pays \$4,040,408 to Tribes
 - PPLM pays \$3,000,000 (4 x \$750,000 annually on 06/01 beginning 06/01/00) to Tribes.
- Fish and Wildlife Implementation Strategy Funding
 - Continue without change, paid by PPLM to Tribes according to the terms of License Article 66 (i.e. approx. \$1.5 million annually until earlier of either license conveyed to Tribes (2015-2025) or end of license term (2035)).

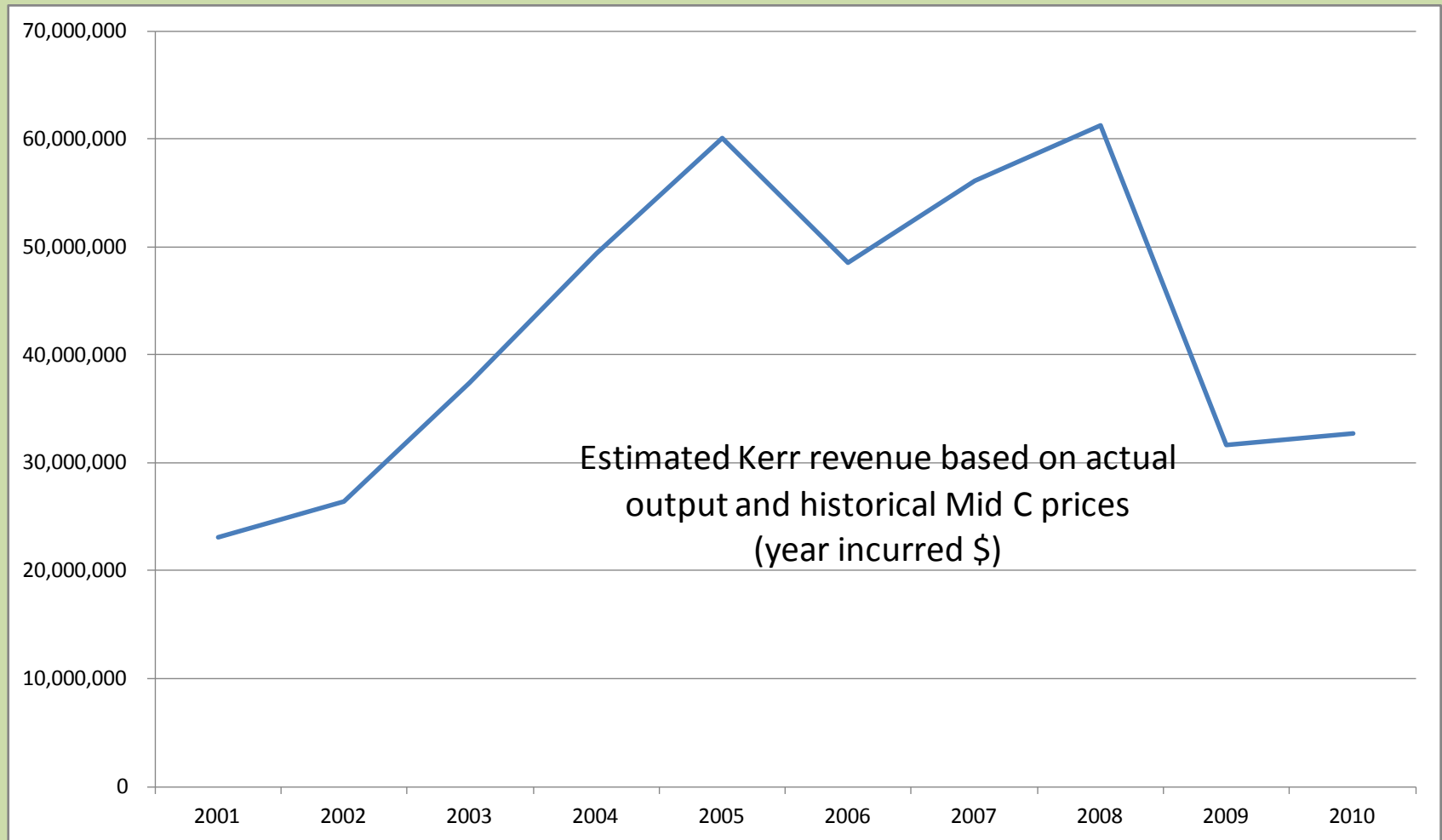


Kerr Project Output & Services

- Generation Capacity (megawatts of electricity) = 188 MW
- Generation Efficiency = approximately 66%
- Time (hrs per year) = 24 hours/day x 365 days/yr = 8,760 hrs/yr
- Average Annual Output = capacity x time x efficiency (188 MW x 66% efficiency x 8,760 hrs/yr = 1,086,941 MWH/yr average) (rounded to 1,100,000 MWH/yr hereinafter)
- Households Served = 1,100,000 MWH/yr ÷ 8,760 hrs/year = 125.57 MW (average output) x 750 households/MW = 94,177.5 households
- Flood Control = 1,219,000 acres feet of storage capacity
- Lake Level = held at 2,893 ft. elevation for four months (June-September)

Kerr Project

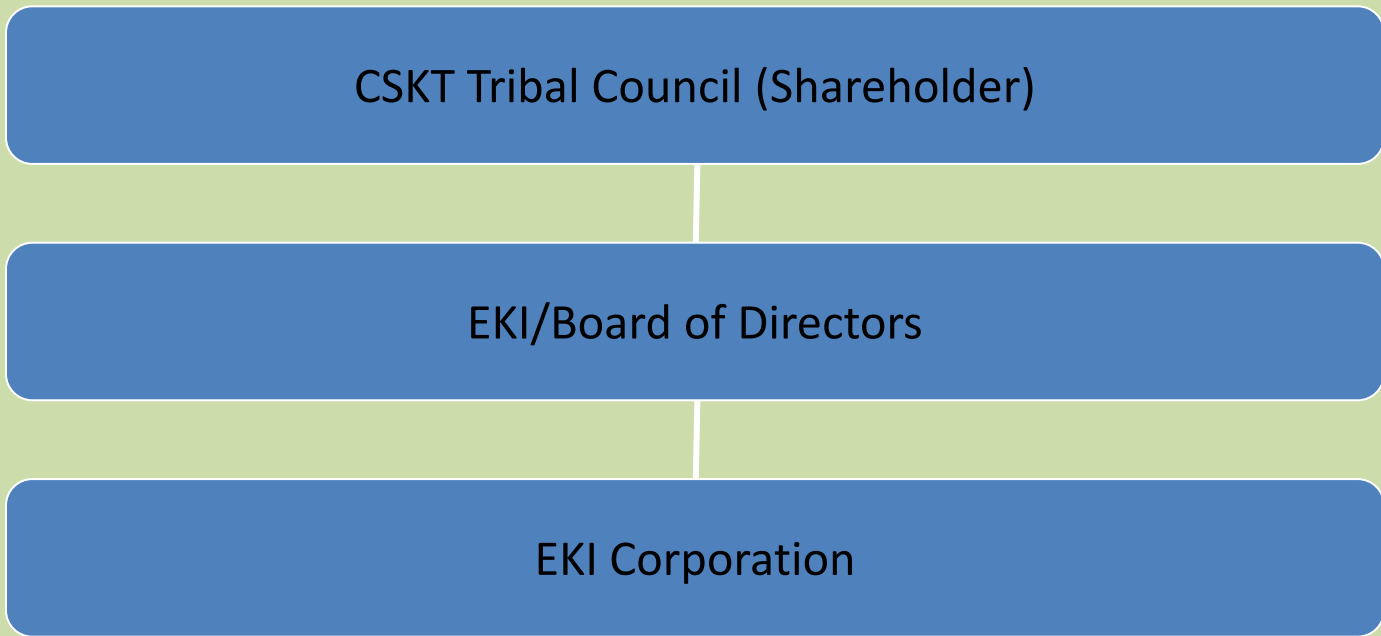
Historic Revenue Estimate



Management of Kerr – Business Structure

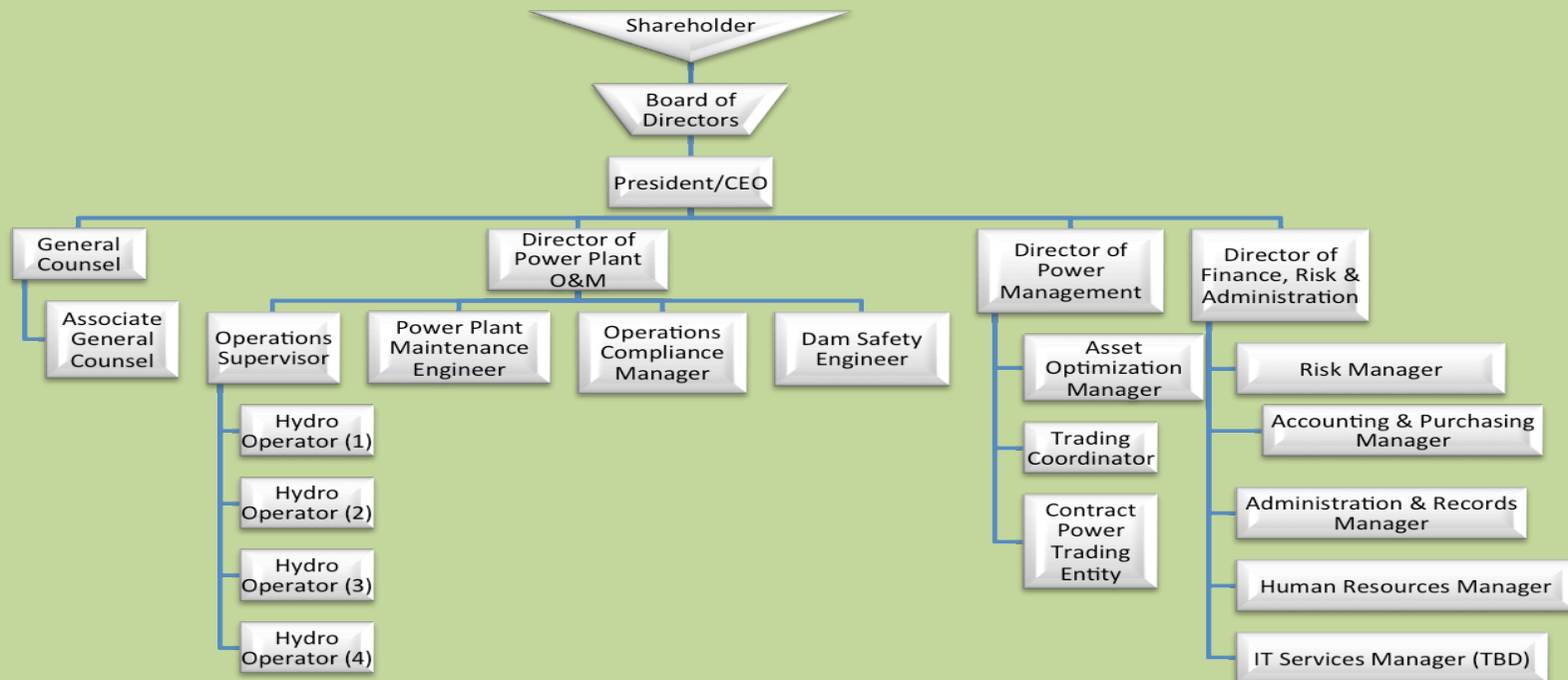
- Energy Keepers, Incorporated (“EKI”) is an IRA Section 17 corporation established by CSKT to operate and manage the Kerr Project.
 - Section 17 of the Indian Reorganization Act (IRA), 25 U.S.C. § 477, permits an Indian tribe to incorporate pursuant to a corporate charter approved by the Secretary of the Interior. Under Section 17, a tribe forms a separate legal entity from the tribal government entity. A Section 17 corporation has the power to contract, to pledge assets, and offer full or limited waivers of sovereign immunity in a “sue and be sued” clause.
- CSKT issued one share of stock for EKI.
- CSKT is the sole shareholder of EKI.
- The U.S. Department of the Interior issued a federal charter of incorporation for EKI in August 2012.

Energy Keepers, Inc. Governance



Management of Kerr – Business Structure

- CSKT will remain the sole shareholder of EKI
- EKI will operate Kerr and be responsible for the sale of output.
- EKI has contracted with a TEA (The Energy Authority) for power marketing and related services.
- EKI will undertake financing activities for the acquisition of Kerr and its ongoing economic needs.
- EKI has staffed 15 of the 20 positions on its organizational chart.
- Strategizing the completion of the staffing, training, design and implementation of systems is ongoing.



CSKT/EKI Business Strategy

- CSKT intends to acquire Kerr consistent with the terms of the FERC license and become the sole owner of the Kerr Hydropower Project.
- CSKT, as a government, will assume licensee status before the FERC and retain ownership of Kerr Project lands and assets.
- CSKT has established, populated, and capitalized a new business enterprise, doing business as Energy Keepers, Incorporated (“EKI”) that is separate from the CSKT government.
- EKI, will eventually become a co-licensee for the Kerr Project with CSKT and will assume possession, management, and operation of Kerr.
- EKI will seek exempt wholesale generator status from the FERC and will sell the electrical output as a wholesale power generator at market-based rates in order to provide a long term stream of income to CSKT.
- EKI will contract with recognized companies for power marketing and related services, along with contracting for specialty operations and maintenance services.
- EKI will develop a sales portfolio that protects CSKT against risks presented by the market, technological operations, hydrology, and transaction counter-parties.

CSKT Business Development & Kerr Project Acquisition Activities

- Financing (internal & external) 1985-2015
- Business Development/Incorporation 2006-2015
- Planning & Preparation 2006-2015
- Consultants & Partners 2008-2015
- Directors & Managers 2012-2013
- Conveyance Price Dispute 2012-2014
- Operator Apprentices 2013-2015
- Initial Power Purchase Agreements 2014-2015
- Conveyance 2015

Kerr Project Conveyance Process

- PPL Montana initial Est. Conveyance Price 09/05/2010
- PPL Montana updated Est. Conveyance Price 09/05/2012
- CSKT Review & Notice re: Dispute 10/18/2012
- Negotiation 12/18/2012
- Arbitration panel convened 04/20/2013
- Arbitration concluded 03/04/2014
- CSKT Notice re: Conveyance Date 03/05/2014
- CSKT Payment 09/05/2015
- **Payment is the sole action required to effectuate CSKT acquisition of Kerr Project from PPL Montana so as to become sole licensee*
- PPLM actual Conveyance Price 10/04/2015
- True-Up process 12/03/2016
- End of license term 09/04/2035

Contact Information

- **Confederated Salish and Kootenai Tribes**
 - P.O. Box 278
 - Pablo, MT 59855
 - (406) 675-2700
 - Attn: Ronald Trahan, Chairman
 - Attn: Stu Levit, Staff Attorney

- **Energy Keepers, Incorporated**
 - SX^wNQE?ELS L SUWĚČM / KSUKZIZMUMAZ gAdJAZMUKWAGITS, INCORPORATED
 - A Wholly Owned Corporation of the Confederated Salish & Kootenai Tribes
 - 110 Main Street Suite 304
 - Polson, Montana 59860
 - (406) 883-1113
 - Attn: Brian Lipscomb, Chief Executive Officer
 - Attn: Joe Hovenkotter, General Counsel