

**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL ENERGY REGULATORY COMMISSION**

<b>Confederated Salish and Kootenai Tribes )</b>	
<b>Energy Keepers, Inc. )</b>	<b>Project No. P-5-098</b>
<b>NorthWestern Energy Corporation )</b>	

**REQUEST FOR REHEARING**  
**SENATOR VERDELL JACKSON AND SENATOR BOB KEENAN**  
**October 1, 2015**

1. Pursuant to Section 313(a) of the Federal Power Act (FPA), 16.U.S.C. § 825/ (2012), and the Federal Energy Regulatory Commission’s (Commission) regulations at 18 C.F.R. § 385.713 (2015), Senators Verdell Jackson and Bob Keenan respectfully submit this *Request for Rehearing* of Commission Order 152 FERC ¶ 62,140 issued September 1, 2015.<sup>1</sup> The *Order* grants the partial license transfer of the Kerr Project to Energy Keepers, Inc., a subsidiary corporation of the Confederated Salish and Kootenai Tribes (CSKT).
  
2. As long-term residents of northwestern Montana, and having represented over 22,000 people in years of service as legislators from Kalispell, Montana who are directly impacted by the proposed partial license transfer from the CSKT to Energy Keepers Inc (EKI), Senators Jackson and Keenan<sup>2</sup> sought intervention status in order to clarify and verify statements made in *Kerr Hydroelectric Project, Project No. 5: Application for Approval of Partial Transfer of License and Co-Licensee Status (Application)*, submitted on April 14, 2015 by the CSKT through legal counsel.<sup>3</sup> Our goal in intervening is to develop license conditions that will protect all Montana citizens who depend on the dam. Hiring and training the most qualified workers regardless of race must be required. Loss of electricity, water for irrigation, recreation opportunities and

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<sup>1</sup> 152 FERC ¶ 62,140, September 1, 2015 (herein “*Order*”)

<sup>2</sup> Senator Jackson currently serves on the Flathead Conservation District which approves projects that affect river and lake water levels in Flathead County. Also, as vice chair of the Flathead River Commission, he deals with flood control and is involved with the required coordinated operations between Kerr Dam and Hungry Horse Reservoir. He is knowledgeable about Montana water law, water rights, and hydropower operations. Senator Bob Keenan has similar experience. He termed out of the Senate after serving as minority leader and president of the Senate, but is now back serving Senate District 5 again.

<sup>3</sup> Motion to Intervene, Kerr Dam Partial License Transfer, submitted by Senator Verdell Jackson and Senator Bob Keenan, May 26, 2015

floods are just a few of the emergencies that could happen if there are no procedures in place. Previous licensees have had these procedures in writing and implemented because they were regulated by the Montana Public Service Commission. We believe that FERC is our last resort, but their attorneys in responding to our previous interventions have failed to address any of our concerns. Who will be accountable when a tragedy does occur resulting in loss of life and/or finances because our constitution and laws have not been followed by our own government?

3. Based on the language of the *Order*, Senators Jackson and Keenan understand that the Commission failed to address any of the issues raised by their Motion to Intervene (Motion).<sup>4</sup> Instead of responding to the issues raised in the Motion, the Commission found ways to avoid, dismiss, and minimize the seriousness of the issues raised.
4. Consequently this *Request for Rehearing* asks the Commission to reconsider its *Order* and provide a mechanism and means to address the substantive issues raised in the Motion.

### **Background Information**

5. In their Motion to Intervene, Jackson and Keenan raised five (5) substantive issues regarding the partial license transfer and requested the Commission's response to the questions raised. Alternatively, Senators Jackson and Keenan suggested that a public hearing would be an appropriate venue through which to address these concerns. In brief, the concerns raised in the Motion include:<sup>5</sup>
  - a. The federal status and nature of the CSKT and EKI for the purposes of regulation, oversight, and other obligations;
  - b. Documentation of the EKI/CSKT compliance with previous license conditions;
  - c. Transparency in financial operations particularly with regard to the use and disposition of publically-derived funds;
  - d. Oversight by the Montana Public Service Commission, federal agencies, and Congress;
  - e. Documentation of emergency operations, including the Kerr Dam inclusion as one of several "black start" dams in the U.S., to the greatest extent possible.
6. Of these five substantive issues the most serious is whether there is any documentation that the EKI/CSKT will follow the license conditions as if it were the original licensee. Simply stated, the EKI and CSKT own corporate charter specifically reject all state laws and regulations. To wit:

*Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting the State of Montana, or any other state, any regulatory jurisdiction or taxing jurisdiction over the*

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<sup>4</sup> See *Order* at paragraphs 11 through 18

<sup>5</sup> *Ibid* note 3

*property or activities of the Corporation or its employees located within the boundaries of CSKT's Indian Country*<sup>6</sup>

7. In addition, the CSKT as the only shareholder of the EKI is on record as saying that the capture of Kerr Dam would allow the Tribe to meet its overall political objectives of regaining and controlling all reservation land. The EKI corporate charter specifically prohibits the CSKT Tribal Council from mixing its tribal objectives and politics with the operation of Kerr Dam. From a press release of EKI in May, 2014:<sup>7</sup>

*“By acquiring the Kerr Project, CSKT will be restoring ownership and control over lands of the Flathead Indian Reservation, our treaty-reserved homeland,” Lankford said. “By assuming control over Kerr Dam, CSKT will be asserting management and control over Flathead Lake and the Flathead River, two critically important water resources of the Flathead Indian Reservation.”*

### **Commission Fails to Address Substantive Concerns**

8. Yet, the Commission permitted the CSKT/EKI to simply say “EKI states for purposes of section 9(a)(2) of the FPA that to the best of its knowledge and belief, it is in compliance with all applicable state laws” 18 C.F.R. § 131.20(5). What does the CSKT/EKI consider “applicable state laws” when it rejects all of them?
9. The Commission’s response to the issue of the CSKT/EKI following all previous license conditions is simply repeat what the Tribes claim as following “applicable state laws” without even looking at the EKI/CSKT mission statements.<sup>8</sup>
10. For the Commission to then conclude, without so much as investigating any of the issues raised, that the partial license transfer is “in the public interest” defies logic especially in light of the numerous concerns raised by our Motion as well as those of other intervening parties.
11. The Commission erroneously assumes that all of its required oversight of new licensees was taken care of in the 1985 proceedings, where the Commission determined that all the parties had submitted satisfactory evidence of fitness to hold the license in compliance with state law. However, the Commission does not acknowledge or remember that the CSKT was only authorized to perform the activities for two (2) articles in the 1985 license.
12. Incredulously, the Commission argues that it is “too late to raise this matter with respect to the Tribe, and there is nothing in the record that suggests a relevant issue regarding Energy

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<sup>6</sup> Improper definition of the CSKT reservation lands which convey no authority to or jurisdiction of the Tribes over any non-member living within the boundaries of the reservation.

<sup>7</sup> The EKI Charter specifically omits any mention of the public interest.

<sup>8</sup> Order, page 7, paragraphs 17, 18.

Keepers”.<sup>9</sup> If there is “nothing in the record” regarding Energy Keepers, why should it be granted a partial license for the Kerr Project without Commission review? Is there any other entity in the United States, formed “overnight” as the EKI was, that would be allowed to avoid the Commission’s evaluation?

13. The Commission also has failed to develop standards for the transfer of a hydropower license to a Tribe, given the serious issues that arise when the state in which a facility is located is unable to regulate the facility so the public interest is protected. As representatives of thousands of Montanans who will be affected by this partial transfer, we find this unacceptable.
14. The Commission’s excuse for its failure to develop standards is based on the theory since the law provides no guidance, the Commission is unable to act, citing an unrelated case<sup>10</sup> and stating in paragraph 15 on page 6 of the *Order*:

*Section 8 of the FPA<sup>11</sup> sets forth no specific standard for transfers; the Commission has held that a transfer may be approved on a showing that transferee is qualified to hold the license and operate the project, and that transfer is in the public interest.*

15. As to the issue of the Kerr Project being one of several “black start” dams critical to the nation in the event of an emergency, the Commission didn’t even do the modicum of research to understand whether the Kerr Project, or other projects within its network, was such a facility. Given the status of the FERC as a federal agency it is inconceivable that FERC would not have even checked with the Department of Homeland Security and provided some kind of answer to the question. Instead the Commission states that the facility is “alleged” to be a black start dam, dismissing the concern outright.<sup>12</sup>

### **Request for Rehearing**

16. Based on the above assertions, and incorporating our previous submittals to the Commission in their entirety, Senators Jackson and Keenan hereby petition for a rehearing of the subject of the partial license transfer of the Kerr Project to the EKI.
17. While we accept the Commission’s assertion that a “hearing” can be based upon the written record, we don’t believe the Commission has examined the record.<sup>13</sup> Therefore we reiterate our strong suggestion that the Commission respect the public’s wishes and hold a public hearing on the license transfer so that the Montana public can determine whether the license transfer is in the public interest of the state.

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<sup>9</sup> *Order*, page 6, paragraph 12

<sup>10</sup> *Gallia Hydro Partners and Rathgar Associates, LLC*, 110 FERC ¶ 61,237 at P 10 and n.12 (2005)

<sup>11</sup> 16 U.S.C. § 801 (2012)

<sup>12</sup> *Order*, page 3, paragraph 6

<sup>13</sup> Instead the Commission relies upon a tired, incomplete assertion that all the objections and issues raised are moot because they were supposedly addressed in 1985, or alternatively, were not raised at that time

18. Until the Tribe, the Commission, or EKI are able to answer the aforementioned questions, the Kerr Project partial license transfer will not be in the public interest.<sup>14</sup>
19. Senators Jackson and Keenan respectfully suggest that all of the questions raised in this Petition for Rehearing can be addressed easily through responsive and responsible agency action, a public hearing, and substantive responses to the issues identified.
20. Until the public is confident in (a) the Commission's due diligence in licensing the facility, and (b) the Tribes' ability to operate and manage this facility through responses to the substantive issues, we will continue to pursue the effective oversight of the Kerr Project and conditioning of the license to meet these objectives.

Respectfully Submitted:

/s/ Verdell Jackson  
Senator Verdell Jackson

/s/ Bob Keenan  
Senator Bob Keenan

October 1, 2015

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<sup>14</sup> There are dozens of specific questions that would enable the public to have more confidence in the Commission's action, including the tribes' compliance with OSHA regulations, hiring practices, specific journeymen programs the tribes are being trained under, whether the tribe can operate Kerr Dam with 24/7 with the required number of personnel, emergency response team and action; existence of cyber security measures, etc. Simply providing written answers to these issues, or providing the information in a public hearing, would suffice. The Commission's 1985 decision was fifteen years before the events of September 11, 2001, and many security issues remain for the Kerr facility.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document and attachment upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Kalispell, Montana, this 1<sup>st</sup> day of October, 2015.

/s/ Verdell Jackson

Verdell Jackson  
Senator Verdell Jackson

/s/ Bob Keenan  
Senator Bob Keenan

**Section 17 of the Indian Reorganization Act of 1934**

**25 U.S.C. § 477**

**(June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207)**

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Northwest Regional Office  
911 N.E. 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169



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**Tribal Services**

Honorable Joe Durglo  
Chairman  
Confederated Salish and Kootenai Tribes  
Post Office Box 278  
Pablo, Montana 59855

Dear Chairman Durglo:

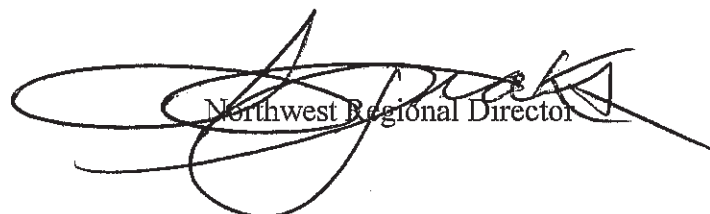
We have completed our review of the Federal Charter of Incorporation for the Sx<sup>w</sup>n<sup>q</sup>e?els l Suwečm/Ksukziznumaz gAdjazmukwagits, Incorporated [d/b/a Energy Keepers, Incorporated] hereinafter referred to as "Corporation", submitted by the Confederated Salish and Kootenai Tribes (Tribes). The charter of incorporation was accompanied by Resolution 12-204, enacted on August 16, 2012, requesting the Secretary of the Interior to issue a Federal Charter of Incorporation to the Tribes pursuant to 25 U.S.C. § 477, as amended. All Regional Directors have been delegated the authority for approval of Charter of Incorporations in accordance with 3 IAM 4.4 and the Director, Bureau of Indian Affairs' Memorandum of October 11, 2006, Policy for Approval of New, Revised or Amended Tribal Organic Documents.

This document has also been reviewed by the Office of the Regional Solicitors. The attorney made several recommended comments which were addressed in the attached Corporation. This recent Federal Charter of Incorporation does not contain any provision that is contrary to applicable federal law. As evinced by the signature of the Northwest Regional Director on the Certificate of Approval, the enclosed Federal Charter is hereby approved. It shall become effective on the date of ratification by the Tribal Council of the Confederated Salish and Kootenai Tribes. Nothing in this approval shall be construed as authorizing any action that would be contrary to federal law.

Upon ratification of the Charter of Incorporation by the Tribal Council, please provide this office with three (3) copies of the original document, including the resolution of ratification by the Tribal Council. Enclosed is the approved original of the Charter of Incorporation for your records.

If you have any questions, please contact Betty Scissons, Tribal Government Specialist, at (503) 231-6723.

Sincerely,

  
Northwest Regional Director

Enclosures

**Attachment 1: Footnote 7 - EKI Corporate Charter**



**RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION**

**RESOLUTION TO RATIFY FEDERAL CHARTER OF INCORPORATION FOR  
Sx<sup>w</sup>nq̣eʔels l Suw̄ečm /Ksuk̄iɬmumaʔ ʔA·kaɬmukwaʔits, INCORPORATED  
(d/b/a ENERGY KEEPERS, INCORPORATED)**

**Be It Resolved** By the Tribal Council of the Confederated Salish and Kootenai Tribes:

**Whereas**, the Tribal Council, as primary governing body of the Confederated Salish and Kootenai Tribes (“Tribes”), is entrusted with the responsibility to operate the Tribes’ governmental business, to protect and preserve Tribal property, wildlife and natural resources, and to protect the health, security and general welfare of the Tribes;

**Whereas**, Congress by enacting Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as amended, authorized the Secretary of the U.S. Department of the Interior (“Secretary of the Interior”) to issue a federal charter of incorporation to an Indian tribe;

**Whereas**, the Tribes are a federally-recognized Indian tribe;

**Whereas**, the Tribal Council, by Resolution No. 12-204 enacted August 16, 2012, petitioned the U.S. Department of the Interior, Bureau of Indian Affairs, Northwest Regional Director (“BIA NW Regional Director”) pursuant to authority delegated to him by the Secretary of the Interior under 25 U.S.C. § 477, as amended, to issue a federal charter of incorporation to the Tribes to establish Sx<sup>w</sup>nq̣eʔels l Suw̄ečm /Ksuk̄iɬmumaʔ ʔA·kaɬmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated) as a federal corporation; and

**Whereas**, all of the legal requirements for issuance of a federal charter of incorporation have been fulfilled.

**Whereas**, the BIA NW Regional Director approved a federal charter of incorporation for Sx<sup>w</sup>nq̣eʔels l Suw̄ečm /Ksuk̄iɬmumaʔ ʔA·kaɬmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated) on August 29, 2012, and issued the approved charter to the Tribes to become operative upon ratification by the governing body of the Tribes;

**Whereas**, the federal charter of incorporation issued by the BIA NW Regional Director for Sx<sup>w</sup>nq̣eʔels l Suw̄ečm /Ksuk̄iɬmumaʔ ʔA·kaɬmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated) is in the same form as was presented by the Tribal Council to the BIA NW Regional Director in the Tribes’ petition and is acceptable to the Tribal Council in its approved form;

**Whereas**, there is no requirement pursuant to the Constitution or laws of the Tribes that prescribes any particular action, including a referendum of the membership of the Tribes, for ratifying the federally-approved charter of incorporation for Sx<sup>w</sup>ndę?els | Suwęc̄m/ Ksuk̄īmumaʔ 'A-kāmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated); and

**Whereas**, the Tribal Constitution, at Part 2 – Bylaws, Article II, Section 2, vests the Tribal Council with the power to take action pursuant to resolution.

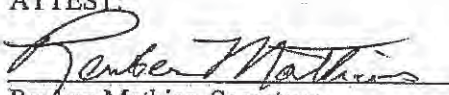
**Now therefore be it resolved**, that the Tribal Council hereby ratifies the federal charter of incorporation for Sx<sup>w</sup>ndę?els | Suwęc̄m/Ksuk̄īmumaʔ 'A-kāmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated) as approved by the BIA NW Regional Director on August 29, 2012 pursuant to authority delegated to him by the Secretary of the U.S. Department of the Interior under 25 U.S.C. § 477, as amended; and

**Now, therefore be it further resolved**, that the Tribal Council hereby authorizes and directs the Tribal Department of Energy, the Tribal Legal Department, and the Chairman of the Tribal Council to develop supporting documents and take additional actions necessary to incorporate and make operational Sx<sup>w</sup>ndę?els | Suwęc̄m/Ksuk̄īmumaʔ 'A-kāmukwaʔits, Incorporated (d/b/a Energy Keepers, Incorporated) consistent with its federal charter of incorporation.

#### CERTIFICATION

The foregoing resolution was adopted by the Tribal Council on the 4<sup>th</sup> day of September, 2012, with a vote of 9 for, 0 opposed, and 1 not voting, pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a), (c), (f), (o), and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

  
\_\_\_\_\_  
Joe Durglo, Chairman  
Tribal Council

ATTEST:  
  
\_\_\_\_\_  
Reuben Mathias, Secretary  
Tribal Council

**RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD RESERVATION, MONTANA**

**BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED  
SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION**

**WHEREAS**, the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“Tribes”) is a federally recognized Indian tribe, governed under a constitutional form of government organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, as amended, and possessing all the inherent sovereign powers of self-government; and

**WHEREAS**, the Tribal Council is the duly authorized governing body of the Confederated Salish and Kootenai Tribes; and

**WHEREAS**, the Tribes desire to create a business corporation known as SX<sup>W</sup>NQ<sup>E</sup>’ELS L SUWEČM /KSUKĚĬEMUMAĚ ʼA-ĶAĚMUKWA’ITS, INCORPORATED [to at times do business as ENERGY KEEPERS, INCORPORATED](hereinafter referred to as “Corporation”), which is to be wholly owned by the Tribes and organized as a federal corporation under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended; and

**WHEREAS**, the Internal Revenue Service has ruled that a business corporation chartered under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended, retains the non-taxable status of the Indian tribe that owns the business corporation; and

**WHEREAS**, the Tribal Council has determined that the best interests of the Tribes will be served by organizing Corporation as a federal corporation under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended; and

**WHEREAS**, the Tribal Council has reviewed and approved the attached draft of a federal charter of incorporation for Corporation, which is attached hereto and incorporated herein as Exhibit “A”; and

**WHEREAS**, there is no requirement under the Constitution or other law of the Tribes that requires a referendum by the members of the Tribes or any other procedure beyond this Resolution in order to petition or obtain a federal charter of incorporation under 25 U.S.C. § 477, as amended.



**NOW THEREFORE, BE IT RESOLVED**, that the Tribal Council hereby petitions the Secretary of the Interior to issue a federal charter of incorporation to the Tribes pursuant to 25 U.S.C. § 477, as amended, in the form attached as Exhibit A to this Resolution, or in such modified form as the Secretary of the Interior may approve with the concurrence of the Tribal Council.

**BE IT FURTHER RESOLVED**, that the Tribal Council requests that the federal charter of incorporation be issued to the Tribes at the earliest feasible date.

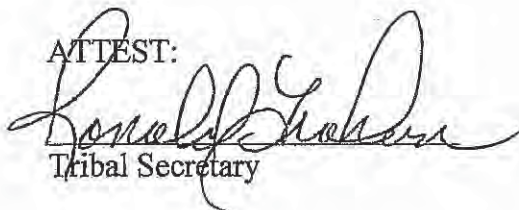
**BE IT FURTHER RESOLVED**, that the Tribes hereby authorize the Tribes' legal counsel to work with the Chairman and his staff to secure the timely issuance of the federal charter of incorporation to the Tribes.

**BE IT FURTHER RESOLVED**, that the federal charter of incorporation requested in this resolution shall not be effective until ratified by vote of the Tribal Council as provided in 25 U.S.C. § 477, as amended.

#### CERTIFICATION

The foregoing Resolution was adopted by the Tribal Council on the 16 day of August, 2012, with a vote of 8 for, and 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Section 1(a), (c), (f), (o) and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

  
Chairman, Tribal Council

ATTEST:  
  
Tribal Secretary

# EXHIBIT "A"

**FEDERAL CHARTER OF INCORPORATION  
ISSUED BY THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
TO THE  
CONFEDERATED SALISH AND KOOTENAI TRIBES  
FOR  
SX<sup>w</sup>NQĒʔELS L SUWEČM /KSUKĪĪMUMAĒ ʔA·KAĪMUKWAʔITS,  
INCORPORATED [d/b/a ENERGY KEEPERS, INCORPORATED]  
A FEDERALLY CHARTERED CORPORATION**

**RECITALS**

**Whereas**, Congress by enacting Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as amended, authorized the Secretary of the U.S. Department of the Interior (“Secretary of the Interior”) to issue a federal charter of incorporation to an Indian tribe;

**Whereas**, the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”) are a federally-recognized Indian tribe;

**Whereas**, the Tribal Council of CSKT petitioned the Secretary of the Interior pursuant to 25 U.S.C. § 477, as amended, to issue a federal charter of incorporation to CSKT to establish Sx<sup>w</sup>nqĒʔels l Suwečm /KsukĪĪmumaĒ ʔA·kaĪmukwaʔits, Incorporated [d/b/a Energy Keepers, Incorporated] as a federal corporation; and

**Whereas**, all of the legal requirements for issuance of this federal charter of incorporation have been fulfilled.

**Now Therefore**, I, Stanley Speaks, Director of the Northwest Regional Office – Bureau of Indian Affairs, pursuant to the power conferred upon the Secretary of the Interior by 25 U.S.C. § 477, as amended, and delegated to me, do hereby issue this Federal Charter of Incorporation (“Charter”) to CSKT for Sx<sup>w</sup>nqĒʔels l Suwečm /KsukĪĪmumaĒ ʔA·kaĪmukwaʔits, Incorporated [d/b/a Energy Keepers, Incorporated] to be operative when ratified by the Tribal Council of CSKT.

**Attachment 1: Footnote 7 - EKI Corporate Charter**

## ARTICLES

### Article I: Name

The name of the corporation is Sx<sup>w</sup>nq̄eʔels l Suwečm /Ksuk̄iḡmumaḡ ʔA-kaḡmukwaʔits, Incorporated, which will from time to time do business as Energy Keepers, Incorporated (hereinafter referred to as "Corporation").

### Article II: Authority

The Corporation is organized under the laws of the United States, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17,48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as a federally chartered corporation and will have the powers, privileges and immunities granted thereby.

### Article III: Status and Management of the Corporation

- A. The Corporation is a legal entity wholly owned by CSKT, a federally recognized Indian tribe, but is distinct and separate from CSKT. CSKT, when functioning in its ownership capacity, is hereinafter referred to as the "Shareholder".
- B. The Tribal Council of CSKT will function collectively as the Shareholder's representative (hereinafter referred to as "Shareholder's Representative") for all purposes regarding the Corporation. Tribal Council members will have no authority to act individually on behalf of the Shareholder other than through participation in a collective action of the Tribal Council of CSKT.
- C. At all meetings of the Shareholder, the Shareholder's Representative will function in the role of sole Shareholder for the Corporation and not in a governmental capacity as Tribal Council of CSKT. Matters within the scope of interest and authority of the Shareholder will only be discussed and decided upon by the Shareholder's Representative when sitting as the Shareholder at a Shareholder's meeting.
- D. The business affairs of the Corporation will be managed under the direction of a Board of Directors ("Board") consisting of Directors appointed by the Shareholder's Representative in the manner provided in and subject to the provisions of the Corporation's bylaws. The Tribal Council of CSKT will have no authority to direct the business affairs of the Corporation, except through its status as Shareholder's Representative.

### Article IV: Duration

## Attachment 1: Footnote 7 - EKI Corporate Charter

The period of the Corporation's duration is perpetual, or until this Charter is revoked by Act of Congress, pursuant to 25 U.S.C. § 477, as amended.

#### **Article V: Purposes and Objectives**

The purposes and objectives of the Corporation are to:

- A. promote and facilitate the development and utilization of energy resources for the benefit of the members of the CSKT pursuant to agreements with the Shareholder;
- B. construct operate, and maintain, or cause to be constructed, operated, and maintained so as to generate a profit and accrued income, the Kerr Hydroelectric Project and related assets, both tangible and intangible;
- C. manage, operate, and maintain the Kerr Hydroelectric Project and related assets, both tangible and intangible, consistent with the terms of the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project;
- D. assist CSKT in financing acquisition of the Kerr Hydroelectric Project and related assets, both tangible and intangible;
- E. engage in any and all other activities as authorized by the Shareholder; and
- F. engage in any and all activities necessary or incidental to the foregoing.

#### **Article VI: General Powers**

The Corporation, subject to any restriction contained in the Constitution and laws of the United States, in the Constitution and By-Laws of CSKT, or in this Charter, will perform every action that it deems necessary, expedient, and proper to fulfill the purposes and objectives of the Corporation, as specifically provided in Article V of this Charter, and all other provisions of this Charter. Without limiting any authority otherwise granted herein, the Corporation may:

- A. Make and perform contracts, indemnifications, and guarantees. Pledge a security, other than a landed security upon any trust or restricted lands included within CSKT's Indian Country, for the repayment of bonds, loans, credit enhancements or other obligations, encumber or expend the revenues and income due or to become due to the Corporation;
- B. Incur indebtedness through the issuance of bonds, notes, or other obligations including obtaining credit enhancements therefore in such amounts as may be

#### **Attachment 1: Footnote 7 - EKI Corporate Charter**



required to establish and operate the Corporation, make capital improvements and carry out the powers granted to the Corporation by this Charter;

- C. Purchase, receive, lease or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any interest in property, wherever located;
- D. Manage, operate, and maintain the Kerr Hydroelectric Project, including: the lands located within the Project boundary that are used and useful in the Project operations, to the extent of the Federal Energy Regulatory Commission licensee's interest in those lands; the Project works; and all of the structures, fixtures, equipment, and facilities used or useful in operating and maintaining the Project;
- E. Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise convey all or any interest in the Corporation's property or assets to the extent permitted by Articles IX(B) and (C) of this Charter; provided however, that in accordance with the provisions of 25 U.S.C. § 477, as amended, the Corporation has no authority to sell, mortgage, or lease for a period of time exceeding twenty-five years, any trust or restricted lands included within CSKT's Indian Country;
- F. Lend money as required for normal generation and sale of energy from the Kerr Hydroelectric Project, invest and/or reinvest Corporate funds and receive and hold real and personal property as security for repayment;
- G. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or any other entity as may be approved by the Shareholder;
- H. Conduct its business, locate offices, and exercise powers granted by this Charter;
- I. Make and amend bylaws, subject to ratification by the Shareholder, consistent with this Charter and the laws of the United States and CSKT, for managing the business and regulating the affairs of the Corporation;
- J. Nominate directors, appoint officers, hire employees, and engage agents of the Corporation;
- K. Define employees' and agents' duties and fix their compensation;
- L. Establish and fund pension, benefit, or incentive plans for its employees and agents;

**Attachment 1: Footnote 7 - EKI Corporate Charter**



M. Make donations for the public welfare or for charitable, scientific, or educational purposes consistent with CSKT government policy; and

N. Transact lawful business that will aid CSKT government policy.

#### **Article VII: Power to Sue and Be Sued**

Except as provided hereafter in this Article, the Corporation:

A. Waives any defense of sovereign immunity from suit that the Corporation may otherwise enjoy under applicable federal, state or CSKT law, arising from any agreement, matter or transaction as may be entered into to further the purposes of the Corporation;

B. Consents to suit in federal court, and consents to alternative dispute resolution mechanisms such as arbitration or mediation; and

C. Waives any defense the Corporation may otherwise assert that federal, state or CSKT law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of CSKT or any instrumentality of CSKT other than the Corporation, and no such waiver by the Corporation shall create any liability on the part of CSKT or any other instrumentality of CSKT for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of CSKT or any other instrumentality of CSKT based on any action, adjudication or other determination of liability of any nature incurred by the Corporation.

#### **Article VIII: New Projects**

The Corporation may explore, investigate, and analyze new energy generation projects and may undertake planning and development of such projects consistent with Article V above.

#### **Article IX: Express Limitation on Corporate Powers**

The Corporation is without power to:

A. Bind any part of CSKT, other than the Corporation itself;

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- B. Voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of any CSKT assets, other than those belonging to the Corporation itself, without the express written approval of the Shareholder;
- C. Voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of interests in the Kerr Hydroelectric Project and its related lands, project works, franchises, easements, water rights, and rights of occupancy without express written approval of the Federal Energy Regulatory Commission, except that the Corporation may voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of interests in Kerr Hydroelectric Project lands or property without specific written approval of the Federal Energy Regulatory Commission pursuant to the then current regulations of the Federal Energy Regulatory Commission;
- D. Operate in a manner inconsistent with this Charter, the bylaws of the Corporation, applicable federal and CSKT law, or the due and valid directives, standards and policies promulgated by the Shareholder's Representative;
- E. Exercise governmental functions;
- F. Waive the sovereign immunity of CSKT beyond the waiver provided at Article VII above; or
- G. Assume the legal status of licensee before the Federal Energy Regulatory Commission for any license, including the license for the Kerr Hydroelectric Project, without the approval of the Shareholder.

**Article X: Ownership of the Corporation**

- A. The Corporation is wholly owned by CSKT. The Corporation is authorized to and will issue one share of common stock, without par value, to CSKT, constituting the sole authorized stock of the Corporation.
- B. The authorized and issued share of the Corporation will not be encumbered or disposed of by CSKT. The share certificate issued by the Corporation will contain the following endorsement:

The share represented by this certificate is not transferable, as provided in the Federal Charter of Incorporation of Sx<sup>w</sup>nqé'els I Suwečm /Ksukñimumañ 'A-kañmukwa'its, Incorporated [d/b/a Energy Keepers, Incorporated], copies of which are on file with the Secretary of the Tribal

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Council of the Confederated Salish and Kootenai Tribes and with  
Sx<sup>w</sup>nqe<sup>?</sup>els l Suwečm /Ksuk<sup>h</sup>imuma<sup>h</sup> 'A-ka<sup>h</sup>mukwa<sup>?</sup>its, Incorporated [d/b/a  
Energy Keepers, Incorporated].

- C. CSKT, as the sole Shareholder, will hold the authorized share of the Corporation on behalf of the entire membership of CSKT. No individual or entity other than CSKT may acquire any share of, or interest in, the Corporation.
- D. CSKT's share in the Corporation will not be pledged or hypothecated, voluntarily or involuntarily, without the prior written consent of the Shareholder's Representative, in accordance with this Charter and with applicable federal and CSKT law.
- E. Neither the status nor lawful actions of CSKT as Shareholder will be construed as a waiver of the sovereign immunity of the CSKT nor as consent by CSKT to be sued.
- F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting the State of Montana, or any other state, any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of CSKT's Indian country.

**Article XI: Disbursement of Net Revenue**

- A. The Board will disburse the net revenue of the Corporation not less often than once each year in amounts that are consistent with the Corporation's financial, operating, and management plans (including reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Board of Directors), provided however that no disbursement will be made when:
  - 1. The Corporation would not be able to pay its debts as those debts become due in the usual course of its business;
  - 2. The value of the Corporation's total assets would be less than the sum of its total liabilities; or
  - 3. The disbursement would violate applicable law.
- B. All disbursements declared by the Board will be paid to CSKT as the Shareholder, disbursements will not be paid directly to members of CSKT.

**Article XII: Registered Agent, Principal Office, Principal Place of Business**

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The registered agent of the Corporation is the Chief Executive Officer of the Corporation. The mailing address of the registered office of the Corporation is P.O. Box 218, Pablo, Montana 59855. The principal place of business of the Corporation is the Flathead Indian Reservation.

**Article XIII. Corporate Seal.** The Board will provide a Corporate seal that contains the name of the Corporation and the words and figures showing that the Corporation was incorporated under federal law and the year of incorporation.

**Article XIV. Dissolution.**

A. After issuance of this Charter by the Secretary of the Interior and ratification by the Tribal Council of CSKT, the Corporation may be dissolved only as provided in this Article.

B. The Corporation may be dissolved by the act of the Corporation as follows:

1. The Board will adopt a resolution recommending that the Corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of the Shareholder.
2. Reasonable written notice will be given to each member of the Shareholder's Representative that states the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.
3. At the Shareholder's meeting, a vote will be taken on a resolution to dissolve the Corporation.
4. Upon adoption of the resolution, a statement of intent to dissolve will be executed by a majority of the Directors and verified by one of the Directors who is signing the statement, and delivered to the Secretary of the Interior.
5. Upon filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation will cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence will continue until this Charter is revoked by Congress.
6. After filing the statement of intent to dissolve, the Corporation will immediately cause notice thereof to be mailed to each known creditor of the Corporation, proceed to collect its assets, convey, and dispose of its properties that are not to be distributed in kind to its Shareholder, pay, satisfy, and discharge its liabilities and obligations and perform all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.

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7. By resolution of the Board or by resolution adopted by the Shareholder's Representative at any time prior to revocation of this Charter by Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation will be filed with the Secretary of the Interior. Upon filing the revocation of voluntary dissolution proceedings, the revocation will be effective and the Corporation may again carry on its business.
8. If voluntary dissolution proceedings have not been revoked when all debts, liabilities, and obligations of the Corporation have been paid and discharged, or adequate provisions have been made therefore, and all of the remaining property and assets of the Corporation have been distributed to the Shareholder, CSKT will take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

#### **Article XV. Amendment**

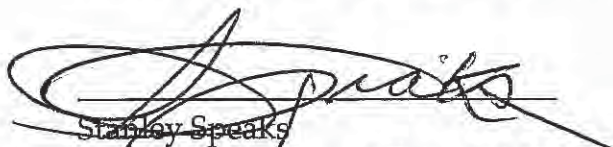
A. The authority to petition for amendment to this Charter is vested in the Tribal Council of CSKT, but such amendment will have no legal force or effect until approved by the Secretary of the Interior and ratified by the Tribal Council of CSKT in accordance with 25 U.S.C. § 477, as amended, and in accordance with CSKT law.

B. The Board may request that the Tribal Council of CSKT petition the Secretary of the Interior for amendment to this Charter, but the final decision on submitting any petition will be made by the Tribal Council of CSKT.

#### **Approval by the Secretary of the United States Department of the Interior**

I, Stanley Speaks, Director of the Northwest Regional Office – Bureau of Indian Affairs, pursuant to the power conferred upon the Secretary of the Interior by 25 U.S.C. § 477, as amended, and delegated to me, do hereby issue this Federal Charter of Incorporation ("Charter") for use by CSKT and its Sx<sup>w</sup>nq̄e'els l Suwečm /Ksuk<sup>h</sup>imumaḥ 'A-kamukwa'its, Incorporated [d/b/a Energy Keepers, Incorporated]. This Federal Charter of Incorporation will become effective upon ratification by the Tribal Council of CSKT, provided nothing in this approval will be construed as authorizing any action under this Charter that would be contrary to federal law.

Dated this 29 day of August, 2012;

  
Stanley Speaks  
Director – Northwest Regional Office

#### **Attachment 1: Footnote 7 - EKI Corporate Charter**

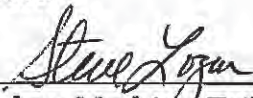
**Ratification by CSKT and Adoption by Corporation**

This Federal Charter of Incorporation is hereby ratified by the Tribal Council of CSKT in the Tribal Council's official collective capacity as incorporator of the Corporation on the 4<sup>th</sup> day of September, 2012 by a vote of 9 for and 0 opposed, and 1 not voting, pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a), (c), (f), (o) and (s) of the CSKT Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended. This ratification is made effective by signature of the Chairman and Secretary of the Tribal Council, in their official capacities as incorporator's representatives, and is adopted by the Board of Directors.

**Confederated Salish and  
Kootenai Tribes:**

  
\_\_\_\_\_  
Joe Durglo, Tribal Council Chairman

Attest:

 FOR:  
\_\_\_\_\_  
Reuben Mathias, Tribal Council Secretary

**Attachment 1: Footnote 7 - EKI Corporate Charter**