

# HISTORIC GUIDELINES FOR FLATHEAD LAKE LEVEL MANAGEMENT

A PUBLIC SERVICE ANNOUNCEMENT by Bill & Irene, LLC

Some say that if you forget history, “you are doomed to repeat it.”

But in the case of the protection of magnificent Flathead Lake and the historic Kerr Dam, if we forget the history of these two jewels and the “rules of the road” for managing them, we are doomed to lose them.

This is the second article of this series. To read the first article please go to: [bit.ly/FlatheadLake](https://bit.ly/FlatheadLake)

## WHAT HAPPENED TO FLATHEAD LAKE IN 2023?

- Nature produced an early snowmelt in April and runoff in May which flowed into Flathead Lake. Flathead Lake reached full pool about June 14. After the snowmelt and early runoff, the streams and rivers entering Flathead Lake naturally diminished in flow are now unable to fill the lake.

- While the lake was filling, and between May 10<sup>th</sup> and June 3<sup>rd</sup>, the managers of Kerr Dam, the CSKT-Energy Keepers, at a minimum released the “Flathead System Compact Water Right” of 229,383 acre-feet to generate power at the dam. The hydropower was sold to a Washington State utility with the profits accruing to the CSKT-Energy Keepers (*Associated Press citing Montana Public Radio, March 30, 2020, “CSKT Signs 15-Year Contract with Washington Utility”*). This water was also used to simultaneously protect downstream fisheries.

- The Flathead System Compact Water Right is approximately equal to the top two (2) feet of Flathead Lake. To release the water from Kerr Dam, the CSKT Energy Keepers utilized a process in the CSKT Compact which is presently being reviewed by the Montana Water Court.

- By July 6<sup>th</sup> Flathead Lake was a foot and a half below full pool, and by the 17<sup>th</sup> the level of Flathead Lake had dropped to two feet below full pool, causing significant economic and environmental damage to the region, lakeshore owners and businesses, and recreationalists.



- Efforts to resolve the issue by Senator Daines, Congressman Zinke, and Governor Gianforte focused on Hungry Horse reservoir releases without mentioning the Compact or acknowledging that the level of Flathead Lake is controlled entirely by the CSKT-Energy Keepers in consultation with the Department of the Interior Bureau of Indian Affairs (BIA).

The existing and ongoing damages from this man-made drop in Flathead Lake levels resulting from the use of Compact water, coupled with the CSKT-Energy Keepers promise of fluctuating lake levels in the future, has prompted a call for the Declaration of Emergency by Flathead and Lake Counties from Governor Gianforte in part to “help them prepare for the future”.

## WHAT ABOUT HISTORY?

The major feature of the 2023 Flathead Lake disaster is the decision to release the Flathead System Compact Water Right of 229,383 acre-feet from Kerr Dam in May and early June to generate power before Flathead Lake had reached full pool.

History provides that:

- The Flathead Irrigation Project. Before the construction of Kerr Dam, Flathead Lake and the Flathead River were already being used for irrigation, commerce, and to generate power to pump water to parts of the Flathead Irrigation Project (FIP) which was authorized by Congress in 1908.

- The Nine-Foot Easement. In 1909 the United States reserved power sites on the reservation and in 1911 set aside a nine-foot easement around Flathead Lake above the then-low water mark (2,883 feet) to store water for power and irrigation purposes. Kerr Dam raised the elevation of the lake by ten (10) feet to today's full pool elevation 2,893 feet.

- 1920 Federal Power Administration (FPA) Rules. The FPA in supporting the development of large-scale power on the Flathead River **limited the generation of power at Flathead Lake to 14,540 cubic feet per second (cfs) and only after the lake reached full pool elevation. Those conditions were carried forth into the FERC licensing for Kerr Dam through 2015 with the last license-holder before Energy Keepers, Pennsylvania Power and Light (PP&L) and thus presumably carried through to the present license.**

- 1930 Flathead Power Report. Kerr Dam was constructed for everyone: irrigators, individual Indians, communities, the United States for irrigation project, “white settlers” who were irrigating, and the owner of the project Rocky Mountain Power Company, later Montana Power Company.

## DOES CHANGING THE NAME OF THE KERR PROJECT CHANGE ITS HISTORY, PURPOSES, OR OBLIGATIONS?

The short answer is “No”.

Upon the purchase of Kerr Dam in 2015, the CSKT-Energy Keepers changed the name of Kerr Dam to The Seli's Ksanka Qlispé' Dam, abbreviated here as “SKQ”. By itself, name change, or new ownership does not re-purpose the dam or relieve it from its historic obligations and practices.

Changing the name also does not erase the fact that Kerr/SKQ is now a federal dam because it was “recaptured” for the federal government by the CSKT. Its main purposes are still power, irrigation, and flood control with fisheries operations included.

But wait...

Enter the Daines-Tester-Gianforte “Montana Water Rights Protection Act”, passed in 2020, which allows for the re-purposing of Kerr Dam and the Flathead Irrigation Project into “fisheries projects” controlled by the CSKT for the benefit of the CSKT Tribal government.

Does it now become clear why Senator Daines, former Congressman and now Governor Gianforte, and Congressman Zinke didn't mention the CSKT Compact or their “signature” legislation, the Montana Water Rights Protection Act as possible reasons for the 2023 events affecting Flathead Lake levels?

## ENSURING THE 2023 FLATHEAD LAKE DISASTER NEVER HAPPENS AGAIN

- We believe the 2023 disaster on Flathead Lake could have been avoided if existing FERC license guidelines had been followed, specifically the limitation on hydropower generation to 14,540 cfs and the requirement to use the power generation right only after Flathead Lake reached full pool, but never in May.

- All the entities involved--the state of Montana, the United States Department of the Interior, and the CSKT-Energy Keepers--could have acted before the disaster began unfolding but chose not to.

- All the entities involved in the 2023 disaster must operate the Kerr/SKQ facilities in consideration of all the interests that depend on the historic effective management that protects fisheries, irrigation, recreation, environment, and lake shore values.

- Unlocking the truth about Flathead Lake, Kerr, the newly named “SKQ”, the CSKT Compact, and the Montana Water Rights Protection Act is the way to prevent the 2023 Flathead Lake disaster from ever happening again.

- Unbridled power, disregard of all who use this lake, and yielding to greed will destroy Flathead Lake,

- All the above will destroy shoreline property values on Flathead Lake

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