

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 5-104 – Montana
Séliš Ksanka QÍispé Project
Energy Keepers, Inc.

VIA FERC Service

February 5, 2024

Mr. Brian Lipscomb
Chief Executive Officer
Energy Keepers, Inc.
111 Main Street, Suite 304
Polson, Montana 59860

Subject: Non-compliance Allegations and Complaints Regarding Flathead Lake Levels

Dear Mr. Lipscomb:

This letter provides Commission staff's findings regarding non-compliance allegations and complaints filed by landowners on low Flathead Lake levels at the Séliš Ksanka QÍispé Project No. 5.¹ Flathead Lake property owners' filings on July 19,² July

¹ *Montana Power Company, Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 32 FERC ¶ 61,070 (1985) (License Order). Many of the complaints erroneously referenced "Kerr Dam." However, Commission staff's November 9, 2015 Order Approving Amendment of License approved the change of the Kerr Hydroelectric Project to Séliš Ksanka QÍispé Project and the Kerr Dam to Séliš Ksanka QÍispé Dam (*Confederated Salish and Kootenai Tribes of the Flathead Reservation Energy Keepers, Incorporated*, 153 FERC ¶ 62,092 (2015)).

² Comments of Siobhan K. Hathhorn under eLibrary Document Accession Number (Accession No.) 20230719-5144.

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20,³ July 21,⁴ July 26,⁵ August 14,⁶ August 15,⁷ August 16,⁸ August 17,⁹ August 23,¹⁰ August 29,¹¹ August 30,¹² September 1,¹³ and September 20,¹⁴ 2023 allege that you did not manage water levels at Flathead Lake in the summer of 2023 in compliance with your license requirements. As discussed in more detail below, we find that although the summer of 2023 brought a unique set of circumstances to the project, you fully operated your project in compliance with your license.

Summary of Allegations and Complaints

The complainants' main concern was record low lake levels in July and August 2023 at the project, which affected recreational opportunities and enjoyment of Flathead

³ Comment of John Hines under Accession No. 20230720-5006.

⁴ Comments of Duncan & Kathleen Hubbard under Accession No. 20230721-5001.

⁵ Comments of Jill Roberts under Accession No. 20230726-5014.

⁶ Comment of Randy and Linda Torgerson under Accession No. 20230814-0009, comment of Jim and Diane Jenks Accession No. 20230814-0010, and comment of Johanna Bangeman Accession No. 20230814-0011.

⁷ Comment of Tate and Tamara Kreitinger under Accession No. 20230815-0001, and comment of Jack Paulson Accession No. 20230815-0002.

⁸ Comment of Sunrise Vista Inn under Accession No. 20230816-0002.

⁹ Comments of Jim O'Day under Accession No. 20230817-0001, and comments of Phillip D. Sauer (Accession No. 20230817-0002).

¹⁰ Comments of Kim Schulke under Accession No. 20230823-0014, Cheryl Galipeau Accession No. 20230823-0015, John W. Cartmell Accession No. 20230823-0016, and Stephen and Karen Vinal Accession No. 20230823-0024.

¹¹ Comments of James S. Bonnet under Accession No. 20230829-0018.

¹² Comments of Marc C. Boen under Accession No. 20230830-0001.

¹³ Comments of Gary and Jeani Adams under Accession No. 20230901-0004.

¹⁴ Comments of Dale Evenson and Mary H. Skinner under Accession No. 20230920-0002.

Lake. Specifically, complainants allege that private boat docks were inaccessible, swimming and boating were hazardous, and lower lake levels affected some businesses which resulted in lost income. Some complainants suggested that you were not properly balancing lake levels to meet all interests of Flathead Lake, while others suggested you should not be allowed to meet minimum downstream water flows while drastically affecting the lake levels which in turn affects recreational opportunities. Others expressed that there was not a public hearing or public participation with the decision to maintain minimum flows downstream of the project at the expense of recreation.

License Requirements

Article 43 of the 1985 project license, as amended, states that you may regulate Flathead Lake between elevations 2,883 and 2,893 feet mean sea level (msl) in such a manner as will make not less than 1,219,000-acre feet of storage capacity available to you. Unless otherwise ordered by the Commission after notice and opportunity for hearing, and subject to Article 44 (which requires you to maintain a continuous minimum flow downstream of the project powerhouse and later replaced by Article 56 described below), such regulation must be in accordance with the Memorandum of Understanding between you and the U.S. Army Corps of Engineers (Corps) dated May 31, 1962, as amended on October 15, 1965, and approved by the Federal Power Commission in 1966.

Article 56¹⁵ of the license requires you to maintain releases at or above the following instantaneous minimum flow, in cubic feet per second (cfs) on a continuous basis as measured at the U.S. Geological Survey (USGS) Polson gage, provided that the passage of minimum flows from Flathead Lake downstream is not limited by natural channel capacity immediately upstream of the Séliš Ksanka Qlispé Dam. You must manage the project in a manner that limits the occurrence of such channel capacity limitations.

Minimum Flow requirements:

Dates	Minimum flows
August 1 to April 15	Continuous at 3,200 cfs
April 16 to April 30	Increased from 3,200 cfs to 5,000 cfs at 120 cfs per day
May 1 to May 15	Increased from 5,000 cfs to 12,700 cfs at 510 cfs per day
May 16 to June 30	Continuous at 12,700 cfs
July 1 to July 15	Reduced from 12,700 cfs to 6,400 cfs at 420 cfs per day

¹⁵ The June 25, 1997 Order Approving Mitigation and Management Plan incorporated Articles 56 through 79 into the license (79 FERC ¶ 61,376).

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July 16 to July 31	Reduced from 6,400 cfs to 3,200 cfs at 200 cfs per day
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The minimum instream flows may be temporarily modified by operating emergencies beyond your control, or for short periods upon written approval from the Secretary of the Interior.

Article 57 of the license requires you to operate the project in accordance with in between day restrictions on flow variations, except as necessary to meet flood control requirements imposed by the Corps under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the Corps subsequent to approval of the Secretary of Interior.

Article 58 of the license requires you to operate the project in accordance with hourly allowable ramping rates, except as necessary to meet flood control requirements imposed by the Corps under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the Corps subsequent to approval of the Secretary of Interior.

Article 60 of the license requires you, in consultation with the Corps, the Bureau of Reclamation, the Bureau of Indian Affairs, and the Montana Department of Environmental Quality to develop and implement a Drought Management Plan of Flathead Lake.

August 29, 2023 Water Year Operations Summary

In your August 29, 2023 filing, you provide an operations summary for water year 2023 (WY 2023). You highlight how your license allows you to manage the storage of Flathead Lake within a ten-foot range (2,883 to 2,893 feet msl) for energy production within the requirements of your license which include minimum instream flows in the Lower Flathead River, regional and local flood control, and coordinated operation with operators of the Federal Columbia River Hydroelectric system. Your letter also describes how the water supply forecasts by the National Oceanic and Atmospheric Administration (NOAA)'s River Forecast Center were below average for every month except May in WY 2023. The water volumes realized for June were at 40% of average and for July they were at 29% of average, which constituted new record lows, and based on estimates for August, you predicted to have a new three month record low water supply for the project, as shown on the NOAA table included in your filing.

Your filing also includes a graph which shows inflow and outflow of Flathead Lake for WY 2023, and how you successfully captured the maximum possible early May runoff without exceeding the maximum license lake level of 2,893 feet msl. The above average water supply in May was a result of record setting runoff of low snowpack

conditions. Unseasonably high temperatures in the early weeks of the month depleted snowpack in the northern reaches of the Flathead Basin at a record rate. You state that this unprecedented fast runoff of the low snowpack presented challenges for you to achieve the authorized storage in Flathead Lake. However, you indicate you coordinated hydrologic modeling for the Flathead Basin frequently with the Corps to secure flood risk management deviations to allow for the maximum license allowed retention of the May runoff. With the Corps deviations secured, you ramped down to the minimum flow requirements pursuant to Article 56 and the ramping rates pursuant to Articles 57 and 58 of your license.

However, by June 1, the snowpack was 15% of the median with many snow measurement sites that contribute to summer inflows reading at zero. With this low water supply, the inflows into Flathead Lake decreased below the minimum license outflow requirements by mid-June. This imbalance in water volume between inflow and outflow was offset with 22.5% of the authorized storage, which resulted in a decrease of 30 inches in the elevation of the lake at the time of your letter. You indicate that with your early coordination efforts with the Corps, you eliminated the need to implement the Drought Management Plan under Article 60 of the license.

You also explain how WY 2023 resulted in lower-than-average hydropower generation due to the low water supply and you include a graph showing how your generation was lower than the average monthly generation from 2016-2022. You note that your marina businesses, which depend on the lake levels, were forced to close early. Beyond boat storage impacts at your marinas and some other private marinas, access to the lake was not affected because all but one of the many public boat launch facilities remained open.

You conclude that your operation has been prudent in meeting unprecedented water conditions of 2023, and you were fully operating within the authorized license requirements. You indicate that you do not see WY 2023 conditions as a one-off event but rather a reflection of ongoing climate conditions. As you continue to adjust to these changing conditions, you predict that in the future you will not be able to maintain the Flathead Lake elevation in the top one-foot range of your license requirements as that can potentially result in catastrophic outcomes. You state that you encouraged lake shore dock owners to adjust their infrastructure to accommodate these changing conditions.

Conclusion

Based on our review of the information you provided in your WY 2023 filing, your monthly operation reports,¹⁶ publicly available data, comment letters, and our

¹⁶ Article 62 of the license, requires you to file an annual operational report to the Secretary of Interior on or about May 1 annually (to be supplemented on a monthly basis

independent analysis, you complied with the operational requirements of your license in the summer of 2023.

Commission staff checked Flathead Lake Levels (<https://flathead.uslakes.info/Level/>) during July, August, and September of 2023 and found that the water levels were 2-3 feet below the maximum elevation but were still within the elevation required by Article 43 of the license. The public hearing provision of Article 43 was not triggered in this case because the Commission did not require deviation from your license requirements. In addition, you managed the lake levels to balance the license requirements for lake levels, drought management, flood control, recreation, and minimum flows to protect aquatic species downstream of the project.¹⁷ Although the lake levels were lower than “usual” in June-August, you still maintained compliance with your required lake elevation and minimum flows, and you coordinated with the Corps for drought management. Further, no public safety incidents were reported to the Commission.

Based on the filings cited above from members of the public, Commission staff recognizes that there is public interest and concern regarding the lower-than-normal Flathead Lake levels and the reduced opportunities for recreation and the ability of lakefront owners to use their private boat docks. However, you informed the public, beginning on May 30, 2023, to warn them about potential impact to the recreation season due to these hydrologic conditions and you frequently updated your Facebook page to provide information on the decreasing lake levels. You also reached out to local media outlets to further distribute this information. You list newspaper articles, television and radio interviews which you were involved in due to the intense public interest regarding the dropping lake level. Furthermore, because of the intense public interest, other entities such as the University of Montana’s Flathead Lake Biological Station also compiled

to include actual operation of the previous month with a daily water surface elevation at Flathead Lake and spill and releases at Séliš Ksanka QÍispé Dam). You filed courtesy copies of these monthly operation reports with us, in addition to the WY 2023 filing, which all show how you complied with your license required lake elevation.

¹⁷ The lake and the nearby portion of the Flathead River house a thriving and varied fishery and support a varied population of wildlife and vegetation and the conditions of the license provide for the protection of fish, wildlife, and related environmental concerns.

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information on hydrologic and climactic factors which contributed to the low water levels in Flathead Lake.¹⁸

Due to the overwhelming interest in recreating on Flathead Lake, please continue to provide relevant information to the public during low flow conditions, that are outside of your control, which affect the lake levels, including but not limited to information on the public boat docks that can be accessed during such low lake levels. In addition, we encourage you, when possible and consistent with your license requirements, to voluntarily use the available reservoir storage space for recreational opportunities, to the extent that your license, hydrologic conditions, and drought and flood control constraints allow. Finally, please continue to coordinate with the Corps on the Drought Management Plan.

Thank you for your cooperation. If you have any questions regarding this letter, please contact Zeena Aljibury at (202) 502-6065 or Zeena.Aljibury@ferc.gov.

Sincerely,

**KELLY
HOUFF**

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¹⁸ <https://flbs.umd.edu/newflbs/outreach/news-blog/posts/flbs-perspective-on-flathead-lake-level/> ; <https://flbs.umd.edu/newflbs/outreach/news-blog/posts/diving-into-2023-flathead-lake-level-data/>

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