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### IT'S ROOTED IN THE LAND: HOW MANAGING NATURAL RESOURCES LEADS NATIVE AMERICAN TRIBES TO SOVEREIGNTY

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IT'S ROOTED IN THE LAND:  
HOW MANAGING NATURAL RESOURCES LEADS NATIVE AMERICAN TRIBES TO  
SOVEREIGNTY

By  
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PROFESSIONAL PORTFOLIO  
presented for the partial fulfillment of the requirements  
for the degree of

Master of Arts  
Environmental Science and Natural Resource Journalism

University of Montana  
Missoula, MT  
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Environmental Science and Natural Resource Journalism

It's Rooted in The Land:

How Managing Natural Resources Leads Native American Tribes to Sovereignty

Chairperson: Jule Banville

Abstract Content:

Tribal management of land and natural resources within the boundaries of Native American reservations is often superseded by state and federal policy. But control of land and resources is, ultimately, what makes a nation a nation. The three stories in this portfolio depict tribes establishing control of natural resources to various degrees of success. Chapter one is a narrative outlining the stories, my reportage and plans for publication. Chapter two: Members of the Northern Cheyenne seek to establish a medical marijuana program after the federal government relaxed enforcement of cannabis bans. Chapter three: An activist on the Fort Berthold reservation turns to tradition in the face of adverse impacts of oil and gas development. Chapter four: The Confederated Salish and Kootenai tribes enter uncharted territory in becoming the first tribes in the country to take over operation of a major hydroelectric facility.

## CHAPTER I

### Narrative

In a most basic sense, control of land and resources is what makes a nation, a nation. The ability to decide how to harness resources and use land forms the basis for community, economy and power.

I see this most clearly on Native American reservations. Establishing treaties were fundamental agreements to ensure that tribes could use land how they wanted in an effort to preserve a special government-to-government relationship between tribal nations and the United States. But in the ensuing years, federal and state governments slowly chipped away at that self-determination, opening tribal lands to white homesteaders, appropriating natural resources and restricting tribes' abilities to develop in the same way as states or even private companies do.

In my portfolio, I sought stories of tribes successfully harnessing natural resources as a means to improve members' quality of life – whether that's measured in economic prosperity, upholding traditional and cultural values or setting an example for other tribes to follow. I found that many tribal members consider managing land and natural resources as an expression of tribal nationalism.

The first story I produced was “Legalization.” This written piece follows two tribal members from the Northern Cheyenne Indian Reservation in Montana pushing for separate regulatory measures to legalize medical marijuana and grow a self-sustaining economy. The Northern Cheyenne tribe has an autonomous tribal government, but many of the services on the reservation are run by a federal agency, the Bureau of Indian Affairs; this includes law enforcement. In this case, federal oversight trumped self-determination and hindered the tribe from successfully developing.

For “Saltwater,” I produced a radio story about a tribal member on the Fort Berthold Indian Reservation in North Dakota fighting to protect water sources impacted by oil and gas development on her reservation. Though the tribes on Fort Berthold retained mineral rights, the majority of developers on the reservation are non-tribal interests. The tribes have no jurisdiction over such companies, creating a patchwork of regulation and enforcement. In this case, control of the resources was split among tribal, state and federal agents, both promoting and hindering the tribes' ability to self-govern.

“Power” is a written story about the precedent-setting transfer of the Seli's Ksanka Qlispe' Dam to the tribes of the Flathead Indian Reservation in Montana. For nearly four decades, leaders of the tribes lobbied and prepared to take over operation of the hydroelectric facility from a private company, efforts that included establishing a department of energy, building small-scale hydroelectric projects and taking over operation of an energy utility. In this case, wresting control and management of one resource led to control of others, creating a positive feedback loop that allowed for greater and greater tribal self-determination.

Though these stories are about natural resource policy and tribal sovereignty, at their heart, they're really about people trying to make life better against stacked odds. They're a balance of fear and hope, action and apathy, trust and cynicism.

While all of these stories were covered by local media, none of them breached regional awareness. I wanted to report deeper and more contextualized stories and reach a larger audience. Pre-reporting was extensive and necessitated an understanding of treaty law, reservation establishment, cultural and traditional practices and beliefs, the science driving development of each natural resource and jurisdictional challenges between tribal, state and federal government agencies. I interviewed government representatives, local residents and industry, science and health experts to help explain to a non-local audience the significance of land and natural resource management for tribal nations. For "Power," I supplemented my reporting by watching documentaries and reading court documents, tribal charters and newspaper editorials. I toured facilities, spiritual grounds and visited sources at their homes.

Working in print for "Legalization" allowed me to conduct much of my reporting remotely. I used social media to connect with sources and pre-interviewed over the phone so that when I visited the reservation I was able to simply observe and collect scenes and imagery. I knew "Saltwater" would be an emotional story and used radio to capture that feeling. I prepared for the technical aspects of production by taking elective coursework and working for the college radio station. Working in print for "Power" allowed me to move through a lot of history and include a large cast of characters efficiently and creatively.

Ethically, race and racism were challenges. My background in tribal education made me sympathetic to efforts that support tribal sovereignty. I wanted to avoid producing stories with overly-rosy outlooks to the future, and therefore talked to residents on the reservations – tribal members and non-tribal members – to ensure fair reportage. I reached out to groups that outright oppose or inadvertently hinder tribal development. I tried to avoid shallow portrayals of Native Americans by focusing on individual experiences instead of generalizations. I spoke with a number of nontribal members who consider tribal rights an infringement on their own and was genuinely curious about those viewpoints. In every interview, I tried to see the issue from my source's point of view and represent that viewpoint faithfully within the broader context of the issue.

"Legalization" was produced for the 2015 issue of Montana Native News and published in the Missoulian and Billings Gazette. It was later republished on Wyofile. I produced "Saltwater" for a national audience with minimal familiarity with the current oil and gas boom in the Bakken. I plan to pitch it to nationally syndicated podcasts like Living on Earth, This American Life and Inside Energy. "Energy" was written for an East Coast audience to give historical background on a precedent-setting Western event. I plan to pitch this story to national magazines such as the New York Sunday Times, California Magazine and High Country News.

## CHAPTER II

Legalization: Cannabis instills fear and hope on the Northern Cheyenne

*This story was published in the 2015 issue of Native News and produced in partnership with photographer Kristin Kirkland.*

IN THE BACK ROOM of the Charging Horse Casino, eight people gathered around two long tables that typically support dozens of bingo cards. Tonight though, dealt among the group were pages and pages of tribal code and the constitution of the Northern Cheyenne Indian Reservation.

Of particular interest was a section in the code that outlines the criminal status of possessing, selling or producing marijuana.

The eight eyed the chapter, speaking quietly over the dull buzz of fluorescent lights and air conditioning. They talked of their ailments: chronic pains, diabetes, cancer. They ticked off medications Indian Health Services had prescribed them, sometimes using both hands. In hushed tones, they spoke of the drug they believed could treat them.

A tall man, Meredith Tall Bull, entered the room.

“You’re all under arrest.”

They shrank into each other, pulling pages of the code off the table. For a second, the only sound was the hum of the lights.

Then they erupted.

“This ain’t in your jurisdiction!”

“Not without a jury!”

Laughter filled the room. The group recognized Tall Bull as one of their own. The meeting at the casino was perfectly legal, but many of the attendees rightfully feared arrest. They had met to research tribal, state and federal laws regarding legalizing medical marijuana.

Under tribal sovereignty, tribes can enact laws separately from the state that surrounds them, answering only to federal jurisdiction. This is why even though Montana has a medical marijuana program, possession or use of cannabis remains a criminal offense within the boundaries of the reservation. But a recent move by the U.S. Department of Justice could change that.

In December 2014 the DOJ announced it would not enforce marijuana laws on Native American reservations. In fact, in what is referred to as the “Cole Memorandum,” the DOJ gave guidelines for tribes choosing to legalize marijuana for recreational or medicinal use. The memo relinquished jurisdiction of marijuana laws to tribal governments.

For the group at the casino, the memo represents hope for improving their lives on the reservation. Known as the Green Side, they have been working since the beginning of this year to educate tribal members about the health and economic benefits of medical marijuana. They want to create a cannabis industry on the Northern Cheyenne reservation.

Others share this goal, and are racing along a parallel track toward legalization of a drug that could treat the myriad ailments that plague the Northern Cheyenne. But they fight an uphill battle. A long history of addiction and reluctance to pioneer legalization of a controversial substance hold just as many back.

A solid man in a black t-shirt quietly but firmly led the Green Side discussion. Waylon Rogers founded the group in January as a social media campaign to educate tribal members about the potential health and economic benefits of legalizing marijuana. What began as a closed Facebook group to find supporters and possible business partners is now an open forum for discussion, with 287 page followers and a dozen insiders who regularly attend Rogers' meetings.

In an attempt to sway public opinion, Rogers writes daily posts on the page to answer questions and link followers to articles and studies.

"It's the 1970s way of thinking of marijuana, the reefer madness," Rogers said of the resistance he's encountered to legalization. "I see why they think that way because that's how they grew up. They were scared of the marijuana plant."

Rogers has held several information sessions, including one with delegates from the Northern Cheyenne Tribal Council in February, to explore avenues to legalization.

The purpose of this Green Side meeting was to draft language for a reservation-wide referendum vote to legalize production, sale and possession of medical marijuana. This was how Montana initially legalized its program in 2004.

Among late-comers to the meeting was Carrie Braine, a confident, spiky-haired middle-aged woman. She leafed through the tribal code and intently read over Roger's agenda for the meeting, which included setting dates for district meetings, a timeline for the vote and a review of the proposed business model.

As voices rose in excitement, Braine's surfaced to the top, telling the group about her cousin, Teri Brien, and her ready-made draft legislation waiting to be considered and adopted.

At the mention of Brien, Rogers tensed, his eyes transfixed on Braine. Rogers had collaborated briefly with Brien, but distanced himself after seeing her draft legislation.

The reason to initiate a cannabis industry, in Rogers' mind, is to benefit everyone on the reservation. Rogers feared Brien would write regulations in a way that would allow her to select producers and distributors. He saw it as a back-alley attempt to monopolize marijuana.

Brien is also hesitant to collaborate. In early meetings, she said Rogers seemed eager to explore all uses of cannabis, including recreational. She feared this could weaken public support of any marijuana program and distanced herself from Rogers to improve the chances of legalizing a strictly medical program.

But, even legalizing medical use is too much for some on the reservation.

Joey Littlebird, Methamphetamine and Suicide Prevention Initiative Program Director, likened legalizing any form of marijuana to opening the door for looser regulation of other substances prohibited by the tribe, like alcohol.



“Once meth came here, it’s here to stay. Just like alcohol, marijuana, it’s here. We’re never going to get rid of it,” he said.

The “Cole Memo” did not change existing laws regarding marijuana. It remains one of the most highly regulated substances nationwide, categorized by the Drug Enforcement Agency in the same category as heroin, peyote, meth, and ecstasy.

To change enforcement on the reservation would require either a referendum vote by the people, or a vote by tribal council. Brien presented her own draft legislation to amend tribal code and regulations one week before Rogers met with the tribal council to discuss a referendum.

The council wouldn’t comment, saying only that they are aware of the issue and working to educate themselves about the pros and cons of medical marijuana legalization.

A referendum vote has two stages: the petition and the vote. Rogers needs to collect signatures from 10 percent within each of the reservation’s five districts, roughly 670 names. The actual vote needs 30 percent approval, about 2,000 ‘yes’ votes, to pass. The last election in 2014 had less than a quarter of the eligible voting population turn out to vote, which was described as pretty good, by a tribal secretary. But the total number of voters was less than the minimum required to pass Rogers’ referendum.

Rogers is undaunted. The possibilities for successful business ventures and a healthy tribe are too alluring. In its final form, the Green Side will become a co-op style production facility where tribal members could trade hours for medicine. Run by and for tribal members, the Green Side would function independently of tribal government.

Rogers only recently converted to green medicine. After an accident at work left him with a broken back and surgery left him with chronic pain, he gladly accepted a prescription from IHS for hydrocodone. But when he returned for a refill after two months, the agency refused and labeled him a pill seeker, a common accusation on the reservation that hints at its history of substance abuse.

Brien and Rogers are paving parallel inroads to legalization. They likely will not join forces, though they each recognize the work of one could benefit the work of the other. Mutual fear and suspicion of each other keep them on their separate tracks.

They do agree that this future industry should stay in the hands of the people. They see the potential for economic growth, safer streets and an energized citizenry. They see a brighter future for the reservation. They see a return to normalcy.

For Brien, this means being able to go home to the reservation, a place she has felt banished from since she got her Montana state-issued medical marijuana card and began taking cannabis oils.

“I’m just asking the tribal council to please recognize card holders so we can be able to come home without fear of being arrested,” she said at home in Billings. “I’m a landowner down there. And I can’t live on my land and take my medicine.”

Brien was diagnosed with stage IV colorectal cancer in 2009. Sitting on the cold hospital bed, she listened as her doctor told her to make her final arrangements: The cancer was so advanced there was nothing to be done. She would likely die within eight months.

She started chemotherapy after a second opinion. She watched her body shrink as it was subjected to rounds of radiation that made everything taste like metal. She underwent surgery to remove a third of her liver after tumors bloomed there, and after it grew back with more cancerous tissue, another surgery to remove it again.

At times, she considered her body more machine than organism. Tubes funneled chemotherapy agents into ports above her heart and at her waist, sapping her hunger as it shrank the metastasizing masses. Malnourishment seemed just as likely to kill her as the cancer itself.

And then her husband suggested she smoke marijuana to regain her appetite.

It is not an uncommon suggestion. Extracted compounds from the cannabis plant have been used in prescription medications since the 1980s. The two best-known compounds, THC and cannabidiol (CBD), have been linked to treating vomiting and nausea caused by cancer chemotherapy treatments.

Some studies go even further, claiming cannabis compounds treat an array of chronic ailments — cancer, diabetes, ulcers, arthritis, migraines, insomnia, depression.

Marijuana regulations make clinical trials difficult, but burgeoning interest from pharmaceutical companies has brought money to fund research.

Sean D. McAllister studies the effects of cannabis compounds, particularly CBD and THC, on breast and brain tumors as a research scientist at the California Pacific Medical Center Research Institute. Model data suggest that CBD effectively targets the gene that scientists have linked to controlling cancerous cell growth.

By blocking this one gene, the compounds not only inhibit the cancer's spread, they also stimulate hunger in patients weakened by chemotherapies.

“It looks promising,” McAllister said of model results, but also acknowledged gaps in definitive data from clinical trials. Most support for the healthful impacts of cannabis stems from anecdotal evidence. Until more clinical trials are conducted, he recommends a measured treatment approach.

“Based on preclinical data, the best idea would be to take [cannabis oils] along with standard care,” he said. “I’m definitely not telling people to opt out.”

Hopeful for this effect, Brien applied for a medical marijuana green card in 2010 and began testing doses of CBD oil, a dark brown, viscous liquid that tastes like cinnamon and frankincense with the faintest hint of mildewed hemp. Applied as a drop under the tongue from a ruled syringe, the oil left her head clear and tongue numb. Her hunger returned, and with it, a renewed grip on life.

But it came at a high price: She cannot take her medicine on the reservation.

Many with the Green Side share Brien's sense of exclusion from their homeland.

One woman brandished the results of a failed urine test. THC registered positive but in such a small amount as to be unquantifiable. Still, the ambient levels could jeopardize her ability to fill prescriptions on the reservation through IHS.

BRANDYN LIMBERHAND smoked marijuana recreationally before a car accident left him paralyzed from the waste down, but the high took him to dark places after he returned home from the hospital. He threw out his stash and didn't think to try cannabis as a medical option until he stumbled upon a long-forgotten vaporizer pen, similar to an e-cigarette but with a hit of THC instead of nicotine. Out of habit, he took a hit.

The trace amount of pot in the pen soothed his aches in a way hydrocodone never had.

He started smoking regularly to cut back on prescription medications, taken in increasingly higher doses as his body built up tolerance. Limberhand plans to develop his own distributing business if a medical marijuana industry emerges on the reservation.

Others, like Melanie Charette, have similar entrepreneurial goals.

Charette joined the Green Side on behalf of her daughter, Breanna Charette, who developed an exceptionally debilitating form of epilepsy when she was seven. IHS is not equipped to handle chronic intensive care, so the Charettes moved to Billings.

Breanna Charette takes several medications to block seizures and several more to treat side effects. She's been hospitalized by adverse reactions, lost sight in the left half of her vision and will likely develop osteoporosis by the age of 30.

Melanie Charette decided it was time to try something different and applied for Breanna Charette's green card.

The Charettes are weighing whether to produce CBD oil for themselves or buy from a distributor. If the tribe votes to legalize medical marijuana, Melanie plans to capitalize on the natural resource.

But Melanie Charette is hesitant to wholeheartedly endorse Rogers' plans. Like Brien, Charette thinks a broad push for total legalization of marijuana, including recreational, could alienate many who would otherwise support a narrowly regulated program.

To Rogers, these measures represent a means for improving life on the reservation.

Pain from the accident and subsequent surgery left Rogers jobless and scraping the bottom of his savings. It prevented him from traveling the powwow circuit, where he and his children eked out spending money running a shaved ice truck and bounce house. Home improvement projects, like repairing the deck that leans over the Tongue River at his mother's house, remained unfinished. His right leg withered from disuse.

Rogers was reluctant to try medical marijuana for pain management. He feared his children and community would disapprove, that it would confirm the previous claims against him that he was a pill seeker.

Many elders and traditionalists on the reservation do not consider cannabis, or for that matter, peyote used in Native American Church rituals, part of Cheyenne culture. In addition to being a federally prosecutable crime, using marijuana would violate tradition and culture.

At his children's urging, Rogers eventually applied for a green card. He now smokes one joint, low in THC, each night at his home on the state side of the Tongue River in addition to

practicing traditional healing methods. He is relieved of his pain, and his children are relieved to have their dad back on the powwow circuit.

Rogers struggles to balance upholding tribal law with treating his medical condition. He saw in the “Cole Memo” a way out from both pain and poverty.

Attitudes on the reservation fall into three camps: Those who support legalization to treat medical conditions, those who fear legalization would only make the current drug scene worse and those who, before being asked by a reporter, were unaware that legalization was even a possibility.

Northern Cheyenne President Levando Fisher said this is an issue to be decided by his people.

“I didn’t want the council to make that decision. I wanted the people to make that decision by referendum vote,” Fisher said.

If they do, the tribal council would still need to amend tribal code with regulations. Brien’s efforts would simply require the council to approve by majority her ordinance to open the reservation to marijuana.

“We really firmly believe it saved her life,” Carrie Braine, the latecomer to the meeting, said. Per Cheyenne culture, the first cousins consider each other sisters. Braine has seen Brien through every step of her unexpected remission and acts as Brien’s boots on the ground in Lame Deer.

Ever the businesswoman, Brien began legally growing and distributing in 2010. By 2012 she was providing to nearly 160 clients in the Billings area. Legislation changes later forced her out of business. When the “Cole Memo” was published, she saw an opportunity to restart her business on the reservation.

Brien recognizes the Northern Cheyenne could set the stage for other tribes to take advantage of the natural resource. She drafted her ordinance with this in mind, careful to reflect the DOJ’s guidelines.

“I have every confidence that our tribe can run this program themselves, using Cheyenne people to go into business to offer the medicine to its people,” Brien said.

She proposes a measured and modest tact, basing regulations on those of states with successful programs. Her ordinance focuses on tribal council oversight, a limited number of providers and patient demonstration of true medical need.

If Brien’s measure passes, she hopes to jumpstart seeds to sell to legal growers on the reservation.

“It’s been a huge undertaking, taken a lot of energy and expense to bring this to the council,” she said. “But I believe 100 percent in my heart I’m doing the right thing.”

Caught between the hopes of healing and the fears of a potential medicine, Brien and Rogers both wait for public approval of marijuana to peak. And sometimes change comes at a glacial pace.

### CHAPTER III

Saltwater: Facing the fallout of oil and gas development, a Mandan woman turns to tradition

*This piece is a 14-minute audio story, transcribed here in full.*

NICKY: Unless you're familiar with the Bakken oil fields in North Dakota, you've probably never heard of Mandaree. The town is little more than a cluster of double-wides, and even though it's in the heart of oil country, it hasn't seen the same influx of people as other boom towns like nearby Williston. But for Lisa Deville, who lives in this town on the Fort Berthold Indian Reservation, this is where it all began, starting with the yellow snow.

**DEVILLE: Umm, yes. Actually, in the winter of 2010, my friend had called me and asked me to see her house... And she said, there's this yellow snow around my house.**

NICKY: Deville is Mandan and Hidatsa, and is an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

**DEVILLE: When I get there, I'm walking all around and looking all the way around her house, and she says, "By my propane tank. I thought it was my propane tank." You know, she was just throwing around all these ideas out.**

NICKY: But it wasn't the propane tank, which wasn't leaking, and it wasn't dog pee either. It looked like a dull yellow sheen on the crisp white snow, and it centered around a pipe sticking out of the ground.

**DEVILLE: At that time I didn't really know what a flare was. So I walked around it and there was yellow snow all over... and if you ever look at one, it looks like ash or something coming off of it. And so, that's what I thought at that time.**

NICKY: That must have been terrifying to find something that there was no scientific answer for.

**DEVILLE: Well, it was but I kept asking questions, and nobody knew, so I researched myself, and that's when everything began.**

NICKY: Deville lives on the reservation with her husband, Walter, and four kids in a town called Mandaree. When she says she kept asking questions, it wasn't just idle speculation. About the same time that the oil boom in the Bakken really got going, she organized a community audit to help Mandaree identify what improvements it would need to successfully weather a full-blown oil boom. She got the attention of local and state officials and became a communication channel between them and her neighbors. I've only ever seen her in running shoes, like she's sprinting to keep up with her ideas on what to do next.

Deville ended up going back to school for a second bachelor's degree in environmental science, focusing specifically on the oil and gas industry's impact on water quality. And the biggest threat she found is from a little known substance called brine.

**DEVILLE: And does anybody understand what brine is? It really affects the land, and it really affects the water.**

NICKY: You may recognize “brine” as saltwater, like in the ocean or what you soak a turkey in. But in the oil patch, brine is the waste – both natural and injected – produced by drilling a well. It’s a cocktail of oil residue and chemicals mixed in with water thirty times saltier than seawater. This waste water is supposed to be contained in pipelines or storage tanks, but in the most productive parts of the oil patch, there’s a leak somewhere almost every day.

Brine spills are sometimes worse than oil spills because brine is so caustic. It kills most plants within days and likes to hang around in the soil. Rain will push it lower underground so that plants can’t soak it up, but once the sun comes out and dries the surface, the salts rise back up, and plant life that touches it usually dies.

I spoke to Tom DeSutter, a soil scientist at North Dakota State University. We talked about what should happen if there’s a brine spill.

**DESUTTER: So the first thing in any remediation project is to assess what the natural conditions were prior to the spill. Then the remediation should focus on bringing those soils and that plant productivity back to that level.**

NICKY: For remediation, DeSutter outlined two options. One is to flush the brine out of the soil, like rinsing shampoo out of your hair. Crews lay down massive, impermeable layers at intervals down a hillside and bounce water off them to flush contaminants out of the soil. Everything is collected in a tank and carted off for proper disposal.

The second option is to scoop out any contaminated soil and replace it with fresh soil. Both options are massive undertakings and sometimes just don’t happen.

**DESUTTER: Yeah, there’s sites across the state that have been there for 40, 50 years, and they’re still barren.**

For Deville, brine spills are even more harmful than oil or gas because people just don’t know how bad it is.

**DEVILLS: It’s poison. I mean, it’s just like cancer. It destroys everything.**

NICKY: When a spill happens on the reservation, there are several agencies who could be responsible for overseeing cleanup, from the tribal Environmental Division, to the state-level Health Department, to the federal Environmental Protection Agency. But with so many agencies with the potential to be responsible, it’s kind of like watching a Little League baseball game, where the three kids in the outfield run for a fly ball, and then it drops right through the gaps in their gloves.

**BAKER: Actually, we’re kind of limping along and looking at each other.**

NICKY: That's Edmund Baker, the director of Three Affiliated Tribes' Environmental Division. He came onto the job just a few months before a pipeline owned by a non-tribal company called Arrow/Crestwood Midstream spilled more than a million gallons of brine, one of the largest in North Dakota history. It leaked onto a hillside overlooking a tributary that leads into Lake Sakakawea, the largest lake in the state and a popular site for fishing, boating and camping. The lake also provides drinking water for most of the people living on the reservation.

An aerial photo distributed by the Associated Press less than a month after the spill in 2014 shows a snaking line of brown, dead vegetation winding through an otherwise lush, green landscape. The discolored trees peter out in a trench that's stained white from the salts. A handful of trucks and tankers straddle the brown patches, but from the air they look miniscule compared to the spread of contamination.

A year later, when I first visited Fort Berthold, locals told me that the spill site was fenced off but they hadn't seen any of the equipment you'd expect to be there if cleanup projects were going on. I called around to find out why.

After the spill was reported on July 9, agents from the North Dakota Department of Health showed up to assess the accident. Their initial estimate of 500 barrels was eclipsed a day later when an EPA representative reported 24,000 barrels, or a little more than one million gallons, had spilled and posed a risk to water courses, plants and wildlife. The second report goes on to describe Crestwood's attempt to contain the spill behind three beaver dams and the company's plan to flush any remaining contamination down the drainage. The final report, filed in June of 2015, is two sentences. It says, "Various EPA offices continue to assist the Three Affiliated Tribes with the technical aspects of this Response. EPA attorneys are discussing injunctive relief with Crestwood."

A representative for Crestwood emailed she had no comment at this time, and the tribe typically doesn't release information about ongoing cases. I only found the EPA's reports after filing a Freedom of Information Act.

I hit roadblocks researching this spill with every group involved with remediation. Even Baker, who is the highest ranking tribal official when it comes to overseeing this type of cleanup project, said he sometimes feels powerless in the face of the boom.

**BAKER: We've seen within the past year about six pipeline breaks, one just last week, a week, uhh, one before that. Everything ranging from production water to crude to raw gas... And, of course our code addresses releases, but we have nothing to do with those initial easements and assessments. We're basically waiting for the event to happen, and it usually does.**

NICKY: And when it does, Baker says the tribe has to take responsibility for cleanup. It's not just for the environment – it's to protect the tribe's independence.

**BAKER: There's always a risk where we don't want to appear as if we can't handle our own sovereignty, the enforcement of it on the environmental end of things.**

NICKY: Baker ends up fighting for any toehold he can get to keep the tribe at the table, but it's an uphill battle.

For a while, Lisa Deville shared Baker's feeling of powerlessness. And, again, it's not like she doesn't do something about it. Once she started learning about the effects of flaring and fracking and spills, she contacted her state representatives, then the governor, then her tribal representatives, trying to draw their attention to tiny Mandaree and petition for stricter regulations for oil and gas development. She traveled out of state to testify at EPA hearings and speak at anti-fracking rallies. After the million-gallon spill, she collected water samples from Lake Sakakawea for two different research groups. She's still waiting to hear back with their results. She even got together with a few neighbors in Mandaree to form POWER, short for Protectors of Water and Earth Rights, to give herself a bigger platform. Lisa followed all the official avenues for public comment and none of them yielded results. It was incredibly frustrating to play by the book and still be ignored.

So, she turned to tradition.

**DEVILLE: What I was always told is that our water is sacred and holy...the more we pray, the more faith we have, the creator will hear us.**

NICKY: Deville got a phone call from one of her tribe's spiritual leaders, who asked her to organize a water blessing ceremony. These ceremonies are done by families or small groups all the time, but it had been almost three decades since all seven of the spiritual leaders of the Mandan, Hidatsa and Arikara tribes came together for a healing ceremony. Deville set one up to coincide with the one-year anniversary of the Crestwood pipeline spill and the Little Shell Pow Wow, the biggest summer event on the reservation. She also organized a protest walk around the pow wow grounds and a series of workshops about environmental justice. It was equal parts prayer and activism.

[NAT SOUND HERE, LISA SAYING SOMETHING ABOUT GETTING READY]

NICKY: The morning of the ceremony is cloudless and hot. At first, there's only a couple dozen people shyly milling around under the shade of a pavilion to hear Deville and others' opening remarks. By the time Lisa asks everyone to turn off their recording devices,

<< DEVILLE MAKING THIS ANNOUNCEMENT >>

and walk down to the waterside for the blessing, almost 100 people are gathered on the shore.

We're led through four rounds of prayer. In each one, a spiritual leader feeds the lake with tobacco, sweet grass and fire, or turns to offer words or a song to each of the four cardinal directions. All the while, a flare across the lake booms like a jet engine, adding a poignant reminder why we're spinning together on the beach.



After the ceremony is the walk. The shyness melts away, and soon everyone is swapping stories of what the oil boom brought to Mandaree.

(VoxPop style)

(GAY NORQUIST): We see riggers up in the mountains and truckers whizzing by us and flames all over and all this construction and drills.

(RUTH): My baby sister was killed by a drunk driver in April of 2012, and that's when the traffic flow I think was at its heaviest.

(CAROLYN FOX): I'm sorry to get real personal but it really hit my family. I've got grandbabies, my sister's got grand babies that were born addicted to meth.

(DUANE): The oil and gas apocalypse is what's going on.

**MOSSETT: There is money, but I don't see it as a benefit.**

NICKY: This is Kandi Mossett with the Indigenous Environmental Network.

**MOSSETT: The cost to our people has been overwhelming. We have people that have been killed from the truck traffic. We have a lot of sicknesses. We have asthma going up in our little kids. Our water is being poisoned, our air is being poisoned. It's not worth it. No matter what money comes in. It's never going to buy back the most precious resource of all and that's clean water.**

NICKY: It's like a collective unburdening. People walk and sweat and cry, and when they reach the end of the road, they form a long line and everyone shakes hands. And that's when the optimism emerges.

**DEMAREE: My Indian name is (XX), the Little Missouri.**

NICKY: This is Allen Demaree Junior, one of the spiritual leaders at the ceremony.

NICKY: What do you hope people take away from the blessing today?

DEMAREE: Life. Plain and simple.

NICKY: Was there a moment during the ceremony that stuck out to you?

DEMAREE: When it moves people.

NICKY: Are you hopeful?

DEMAREE: Very. You have to be.

NICKY: I called Lisa Deville a few months after the ceremony. I wanted to know if the water blessing had an effect, even if it was just getting the word out to the rest of her tribe. She said she hadn't seen any recent activity over at the million-gallon spill site, no follow-up from the tribe in terms of governance or regulatory oversight. But she also said the ceremony was something she needed to do for herself, to know she wasn't alone. And finally, it feels like she's not. One of the groups she collected water samples for is from Duke University – they specialize in finding unexpected compounds in water sources – and they're gearing up to publish their results. Though early sampling around the spill showed nothing out of the ordinary, the Duke team's analysis implies that at least some of the brine is present in the lake. Their full results will be published later this year.

Deville sees this as a promising step toward greater transparency. Since examining the yellow snow, she's been searching for information and she's finally going to get some. But Edmond Baker in the tribal environmental office knows that a report from Duke University won't solve much. By the time the tribe — or academics on the East Coast — are analyzing water quality test results, it's too late. The accident has already happened, and it's the tribe that's left to deal with the results of it.

**BAKER: We're racing towards the end of a finite resource. We're actually racing and knocking each other over trying to get to that point. And so I, you know, I recognize this and don't know why we're racing to the brick wall in the first place. There are other lines of investment.... But it just won't happen because everybody's mired in this game, so committed to their place on that strategic board that nobody dares raise their head to look outside at the bigger picture.**

NICKY: Reporting from the Fort Berthold reservation, I'm Nicky Ouellet.

## CHAPTER IV

Power: How taking over operations of a dam led a Montana tribe to independence

TWO PEOPLE wearing white gloves carried the folded flags across the lawn to the pole that overlooked the lower Flathead River. Four others stood at attention several paces back facing a few dozen onlookers. The color guard watched as the first piercing notes of the flag song erupted from the ranks.

The single melody filled the canyon and echoed off the arching concrete wall of the Salish, Kootenai and Pond d’Orielle Dam.

Other voices joined the first. A gust of wind briefly caught the flags, unfurling both the stars and stripes, which had flown there since 1938, and a new one – deep red with a dreamcatcher in front of a mountain and the words “Flathead Nation – Salish Kootenai.”

On Sept. 5, 2015, the Confederated Salish and Kootenai Tribes successfully acquired the dam, which has always been within the boundaries of the Flathead Indian Reservation, becoming the first tribes in the country to own and operate a major hydroelectric facility.

The transfer is a milestone in the tribes’ efforts to reclaim natural resources long managed by the federal government. Hard and long fought, the flag ceremony commemorated a day four decades in the making. Along the way, the tribes faced heavy opposition from all fronts. But the CSKT doggedly stuck to the singular vision laid out on scrap paper by the tribal council of 1985.

As the final notes of the flag song faded, a man with a gray braid and a slight grin moved to face the crowd.

“This is a very important day in the history of the tribes,” said Vernon Finley, tribal chairman. “The future generations from this day forward are going to reap the rewards of the hard work of all of the people that worked toward this day.”

Among those who were there: Teresa Wall McDonald, a former tribal council member who was one of the first to push for the tribes to take ownership of the dam. “It’s unprecedented in Indian country,” she said. “The fact that our people, our nation, could set a goal years and years ago to acquire this facility and we could see that goal through completion, that’s simply remarkable.”

There are many who doubted whether the CSKT could or should take over the dam, formerly called the Kerr Project. Comments submitted to the Federal Energy Regulatory Commission (FERC) questioned the legality of tribal ownership, the ability of the tribes’ management and the future of Montanans’ energy rates. A last-minute lawsuit even insinuated that tribal ownership was a threat to national security and sought to block the transfer.

At 80 years old, the three-unit hydroelectric plant, which is capable of generating 1.1 million megawatt-hours – enough to power 100,000 homes – annually, is due for massive renovations, and trying to profit off the volatile open market of energy sales is an uncertain gamble.

Standing on a ledge overlooking the dam, which the tribes later renamed the Se'liš Ksanka Ql'ispe' Project, Chairman Finley acknowledged that relying on nature for power, both literally and symbolically, means the CSKT is sailing into uncharted waters.

FRANK M. KERR LOOKED out of place. It was May 31, 1930, and Kerr, in a full suit and holding his speech in the bowl of his fedora, was meeting with the last traditional chiefs of the Salish and Kootenai Tribes to dedicate the Kerr Dam project. He glanced questioningly at the camera before turning back to the chiefs in their full regalia.

Kerr had spent much of the late 1920s on the reservation. As president of the Montana Power Company, he attended pow wows where he brought groceries for tribal elders. Some even remember Kerr and representatives from Montana Power handing out cash to chiefs in exchange for signatures on a petition in support of the dam's construction.

His tactics were shrewd. By the time of the Great Depression, the majority of landowners living on the Flathead Indian Reservation were white homesteaders. Their claims relegated the Salish, Kootenai and Pond d'Orielle people to the least productive patches of their own reservation, away from areas where traditionally they hunted, fished and gathered wild foods. Starving and stripped of their way of life, people saw the dam as a necessary evil that would help them adapt to a cash-based economy and agricultural lifestyle.

Seeing no way to block the development, Chief Koostahtah and Chief Charlo agreed to the terms Kerr negotiated with FERC. Backed by a crowd of young men in traditional dress, they met with him to dedicate their land to his cause.

Koostahtah even bestowed Kerr with an Indian name: Light. In return, Kerr promised to "make use of idle water" for the tribes.

"There have been differences of opinion as to who should do this work," Kerr said through a translator over the roar of the river, captured on archival Fox News footage. "I trust now all will join to make it a great success. I want to thank you and your people for all your kindness and I hope the work will be a success and bring to your people many comforts as long as water falls."

Standing on a ledge the dam would one day occupy, Kerr asked Koostahtah and Charlo to send him their men to work and for their people to visit and view his progress.

They complied out of necessity. Hundreds of Salish and Kootenai men would help build the facility, making 45 cents an hour working some of the lowest level and most dangerous manual labor positions to construct the dam.

Their steady salaries bought wagons, teams and harnesses, turning the former hunter-gatherers into farmers. In "The Place of the Falling Waters," a documentary about the Kerr Project produced by tribal member Roy Bigcrane and historian Thompson Smith in 1990, Joe Eneas, a Salish-Spokane elder, described his job as harrowing at times, but worth it for the wages.

"It was good," he said in Salish. "Later they raised it to 50 cents."

Eneas did what he called “mucking,” shoveling away rock debris that fell from the cliffs above, often without wearing any protective gear, including a helmet. In 1937, the same year he went to work, at least five tribal members died in rock slides and cave-ins, which led some workers to question if the company truly cared for their Native American employees.

“The cliff was high, and they were working below, and the rocks broke off,” Eneas remembered. “Some were killed, I don’t remember how many. I lived because I was not there. I was not with them.”

As many as 14 tribal members are believed to have died during the dam’s eight-year construction. Others protested. At one point, a party on horseback shot at workers taking core samples at the dam site. After scaring them off, the protesters sat watch to guard the river, which for many Kootenais held spiritual significance in addition to being a popular spot for fishing.

Construction finished in 1938 and the dam began generating power within a year. In accordance with the FERC license agreement, Montana Power Company paid \$140,000 to the tribes as an annual land rental fee for use of the site on tribal lands.

That amount would remain largely the same for the next 50 years.

It wasn’t until four years before the license’s expiration that anyone brought up the possibility of something radically different. But in 1976, the CSKT filed a competing application against Montana Power, launching what would become a 40-year campaign to take over the dam.

MANY OF THE DETAILS are long forgotten, but one is certain: At the final relicensing meeting between the CSKT and Montana Power Company, the tribal council kicked staff, attorneys and experts out of the room.

“It was highly unusual,” Teresa Wall McDonald remembered, “but sometimes leaders need the moment to have privacy once in in a while.”

It was 1985, and the license for control of Kerr Dam was up for grabs.

Representatives from Montana Power Company waited in another room at the old Holiday Inn in Missoula, where the negotiations took place. The tribes were trying to figure out a new annual land rental fee, which had only grown to roughly \$3 million since the original FERC license. The power company at that time was pulling about \$50 million yearly in profit, according to historian Smith.

But for many on the council, including McDonald, upping the fee was never the end game. For McDonald, ownership had always been the goal.

“It was the fundamental issue of tribes having the right to do what they want with their own property,” she said.

McDonald was appointed to tribal council in 1984 after spending the previous two years researching the Kerr Dam and Flathead Irrigation Project for the tribes' newly created Natural Resources Department. Even then, colleagues described her as a bulldog. Thirty years after the negotiations, she can still reel off the fine print of the FERC license over chocolate mousse pie – her substitute for breakfast – at the homey Ronan Café.

Working toward ownership of the dam was more than a business venture for McDonald. It was an assertion of the tribes' nationhood.

“It was my life for a period. I don't remember anything else. I was just so focused,” she said.

The Missoula meetings culminated nearly a decade's worth of negotiations centered on whether the tribes should or could take over ownership and management of the dam. That question was part of a broader movement of the tribes to reclaim management of land and natural resources as a way of demonstrating independence from state and federal governments.

Since filing its initial competing application in 1976, the CSKT had fought an uphill battle to secure the dam's next 50-year FERC license.

“The request to FERC was unprecedented. I don't know if they knew how to deal with it,” McDonald said.

FERC organized a series of public hearings to determine support and opposition for the tribes' application. At first, hearings were scheduled for towns just outside the reservation's boundaries, something McDonald saw as a major oversight. After tribal members set up teepees along the reservation's main highway in protest and held a pow wow at the dam overlook, the commission scheduled a hearing in Pablo, the reservation's government seat.

Alongside adamant support from tribal members, two main concerns emerged in the course of the hearings: the tribes' ability to operate and maintain the aging dam and power generator, and the tribes' ability to provide reliable and affordable power to tribal members and non-tribal residents alike.

McDonald remembers the FERC judge pointing out the tribes had no experience in the utility industry. In response, the CSKT initiated several projects to prove its competency.

One was the Boulder Creek Hydro Project, a small-scale dam that added roughly 1,000 megawatt hours to the grid each year. Tom Bateridge is a retired hydrologist who managed the tribes' Water Resources Program from 1982 to 1985.

“I think I was aware, and certainly the tribal council was aware, that building the Boulder Project would give the tribes a better understanding of hydropower,” Bateridge said. “This could only be beneficial in dealing with the Montana Power Company over the Kerr Dam license.”

Another tact was taking over operation and maintenance of Mission Valley Power, a federally owned electric utility that provides electricity to the reservation. That happened in 1988. In the

timeline of events, that was just after the tribes moved forward to become co-licensors of the dam, but McDonald and others involved in all of these changes consider the tribes' takeover of MVP part of what eventually swung the relicensing negotiations in the tribes' favor.

All of it happened as McDonald and other progressive council members contended with the old guard.

“I can tell you that the negotiations internally amongst the council members was not unanimous. We struggled,” said Kevin Howlett, a rookie councilman elected in 1982.

For councilmembers who grew up with the dam, the end goal was never ownership, but simply to get more money from the land rental. The fee was a reliable source of cash that paid for government projects and supported a modest payout to every tribal member a few times a year.

Ownership would mean the up-front cost of the buyout and years of paying for maintenance with an unexpected return.

“I said just leave the dam thing alone,” said Elmer “Sonny” Morigeau, pleased with his pun. Morigeau served from 1976 through 2007 and is one of the known naysayers still living. “We’re getting some money from it now. If we buy it, I said, we’re going to have a heck of a lot of maintenance on it.”

Eventually it became clear that despite the tribes' efforts, FERC was unwilling to grant full licensee status to the tribes. A compromise within the tribal council and with the Montana Power Company would need to be reached.

“It was obvious,” remembered McDonald. “If we can’t be sole license holder, what do we need to sustain the tribe in the interim and how to position ourselves for the future?”

The council decided in their private huddle they would negotiate to become co-licensees with Montana Power Company. MPC would maintain operations of the dam for the first 30 years of the next 50-year FERC license with the option for the tribes to buy the dam outright thereafter. The land rental fee would increase to just more than \$9 million adjusted for inflation; the tribes would invest the income in education and elderly support programs and pay for land buy backs from non-tribal property owners. The CKST would also establish the Kerr Acquisition Fund and annually deposit \$500,000.

They handwrote their agreement, signing their names to the list.

“Then we called the staff and the attorneys back in and said this is what we want. Make it happen,” said McDonald.

McDonald left tribal office not long after the co-license was awarded, leaving others to manage the work she set in motion. Tom Bateridge, the hydrologist, likewise moved on.

“For 30 years the dam just sort of did its thing, and only those of us involved remember,” he said.

THE COUNCIL’S OFF-THE-CUFF CONTRACT turned out to be binding.

Over the next three decades, the tribes added to the Kerr Acquisition Fund, which by 2015 held more than \$32 million and more than covered the dam’s final price tag of \$18.2 million set by a three-judge American Arbitration Association panel in March 2014.

In 2010 the CSKT created an energy department directed by Brian Lipscomb to oversee small hydropower projects, Mission Valley Power and eventually Kerr Dam.

Two years later, the tribes incorporated Energy Keepers Inc., a tribally owned corporation that would operate and manage the dam and also market its power. Lipscomb was appointed CEO.

From 2013 until the morning of the flag ceremony, EKI slowly rotated its people into positions left open by retiring employees of Montana Power and North Western Energy, the company that owned the dam for the nine months leading up to the tribes’ acquisition.

By Sept. 5, 2015, when CSKT began selling energy on the wholesale market, two of the three dam operators were already EKI staff. The transfer, for all its fanfare and symbolic significance, was little more than a bit of lingering paperwork.

“It wasn’t a big deal. It was mostly a cutover of the systems,” Lipscomb said.

Lipscomb grew up spending summers at his grandparents’ house on Blue Bay, an inlet on the eastern shore of Flathead Lake. On weekends, he and his brother would hop in the back of their grandfather’s truck and hitch rides to the overlook, a viewing platform on the south bank of the lake above the 381 feet of arching concrete that make up the 200-foot-tall dam. “I had no clue I’d end up here working on the project at the time,” he said shortly after inheriting the project.

Lipscomb’s confidence in his company and tribe, though well supported by nearly a decade of methodical preparation, starkly contrasts with the backlash the tribes and EKI received in the months leading up to the transfer.

Letters written to FERC and the Montana Public Service Commission by local business owners and Lake County Commissioners expressed fears that tribal management would nullify state and federal oversight of the dam.

This is true to an extent. For example, tribal ownership removes the dam from state jurisdiction, meaning the Public Service Commission can no longer set energy rates for the dam and Lake County will no longer receive a property tax payment of roughly \$1 million each year.

The Polson School District, where about 40 percent of the students are Native American, is still considering how to make up for the nearly \$300,000 annual loss after the tribes declined the county’s request to make an annual payment of \$1.2 million in lieu of taxes.



Other fears, including one about how the tribes will no longer manage lake levels under supervision of the Army Corps of Engineers, are less rooted in fact than they are in the uncertainty that goes hand-in-hand with lack of control.

People wrote letters to FERC. In one, representing the Eagle Bend Yacht Harbor, the writers said that “while we do not object in principle to the CSKT’s ownership of Kerr Dam, we believe that such ownership will be detrimental to the recreational, business, rate payer and environmental interests of western Montana unless the FERC license is conditioned to protect these interests.”

Another from the Flathead Business and Industry Association: “We are also concerned that the ability of Energy Keepers to run and maintain Kerr Dam running in its current capacity and condition maybe in jeopardy if the training of qualified personnel has not be [sic] verified.”

The real kicker came in the form of a lawsuit filed on Sept. 3, 2015, by New York attorney Lawrence Kogan on behalf of former state Sen. Verdell Jackson, current state Sen. Bob Keenan and Pointer Enterprises, Inc. The suit alleged tribal ownership poses a direct threat to national security because reservation lands fall outside the law enforcement and regulatory oversight of federal and state authorities. The suit cites increasingly friendly ties between Native American tribes and the “Islamic Government of the Republic of Turkey” as a worrisome development. Turkey is a longtime ally of the United States and functions under a secular parliamentary republic.

“It would appear that this setting would provide Turkey and such organizations with the opportunity to more freely promote their brand of Islam on reservations and/or to pursue other potentially more dangerous activities,” the suit reads.

The suit also notes that the reservation’s proximity to water and a nuclear power plant leaves the now tribally owned dam open to attack.

“It is quite possible that the Turkish Government, sponsored business enterprises and affiliated groups and members seek access to the uranium deposits and bountiful water sources surrounding the Flathead Reservation for production of yellowcake capable of later conversion to a gaseous state for eventual use in incendiary devices,” it reads.

U.S. District Court Judge Rudolph Contreras rejected the request for injunction on the grounds that the plaintiffs failed to furnish any evidence supporting the lawsuit’s claims. Many on the reservation familiar with the case were disappointed but not surprised by the eleventh-hour roadblock.

“This is as crazy, as frivolous of an attempt to block tribal acquisition as one could ever imagine,” former councilmember Kevin Howlett said, adding, “That’s as absurd as it gets.”

Keenan and Jackson later voluntarily dropped the suit, saying it contained a string of concerns they did not share. Keenan declined to be interviewed for this story. Jackson said he was disappointed that his main concerns were overshadowed by the lawsuit’s more salacious claims.

“The full thrust of what I did for a year was trying to get them to stick by the assurances that were promised to all the people when the dam was built,” he said. Those assurances include providing a low-cost block of power and water delivery for the Flathead Irrigation Project, making a payment in lieu of taxes to Lake County and upholding equal opportunity laws in hiring employees for EKI, aspects of the dam that until recently fell under Montana’s state legislative purview. Jackson fears that ownership by a sovereign tribal nation could change overnight a way of life that’s been around for nearly a century.

“There was a lot assurances when that dam was built that the tribe has just said, we own the dam and we’re not going to provide those assurances,” he said.

Assurances met or not, the dam passed into the tribes’ hands on Sept. 5, making history.

“Now we own it,” said Lipscomb. “Now we don’t have to argue with the company over the value of its existence here on the reservation for us as Indian people. We’ll realize the full value of it.”

MONTHS AFTER THE TRANSFER, what’s now called the Seli’s Ksanka Qlispe’ Dam churns water coming out of Flathead Lake, much like it has since 1938.

The backlash has died down and Lipscomb’s work has mellowed out to the daily monotony of maintenance.

“We expect to find issues,” he said. “But that’s a fun challenge. It’s part of what we do.”

But Lipscomb and most everyone else who knows about dams in general - and this one in particular - understands the tribes bought something old and in need of a lot of maintenance.

In addition to FERC’s required annual safety inspections and quinquennial week-long reviews, EKI commissioned three studies from a hydroelectric engineering consulting firm prior to taking over the dam to shore up the company’s capital expenditure planning.

The firm found the dam and powerhouse in working order, but even so, Lipscomb acknowledged, “Capital improvement over the course of the next ten to fifteen years is going to be a challenge.”

EKI is currently planning an upgrade for all of the units and mechanical aspects of the dam over the next decade, he said. The company has already completed multi-month project to upgrade a thrust bearing, a major component of one of the generators. The generator was offline for months while the part was replaced, and even though the repair went smoothly, Lipscomb said there will likely be more repairs in the near future.

“We haven’t gone public with all the improvements,” Lipscomb said, “but the project is at or near its end of life.”

At the tribes' recent quarterly meeting in April, Lipscomb did outline a project to repair the dam's gates, which were wearing a rut that needed to be sealed.

Another point of uncertainty facing EKI and the tribes is the reliability of water as the region looks forward to yet another dry summer. Flathead Lake's output from January through March was slightly below average, resulting in below-average power generation. Though EKI pays an annual land rental fee to the CSKT, any profits on top of that are paid out to the tribes. If energy production takes a nose dive, government-funded programs will likely feel it.

But this is all business as usual, says Butch Larcombe, a representative for North Western Energy. Larcombe agreed the dam is old and water levels will rise and fall, but he added he expects to see it produce for many more years. "There wasn't any big issues with Kerr we were aware of," he said. "The people that own the dam have great incentive to keep it operating well and performing well. Letting it slide into disrepair isn't in their financial interest."

That hint of financial interest has other tribes' attention. Lipscomb has been fielding calls over the past few months from other tribes looking to test the waters of hydropower. Though still casual – he calls them "hallway conversations" – the chatter cements the CSKT as pioneers in tribal renewable energy development.

"Quite frankly a lot of it we had to figure out ourselves," he said, "because we realized we were doing something that no one had ever done."