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Delivered by Email:
(laura.friend@nrcb.ca)

Natural Resources Conservation Board
4th floor, Sterling Place
9940 - 106 Street
Edmonton AB T5K 2N2

Attention: Laura Friend, Manager, Board Review

**Re: Outline of submissions for Pre-Hearing Conference (NRCB
Application No. 1701)**

Our firm is legal counsel to Ermineskin Cree Nation (“**Ermineskin**”) in regard to the proposed Springbank Off-Stream Reservoir Project (the “**Project**”), and in particular, Natural Resources Conservation Board (“**NRCB**”) Application No. 1701 (the “**Application**”).

Please see below for participant details and an outline of the submissions Ermineskin will present at the Pre-Hearing Conference (the “**Pre-Hearing**”) on Dec 2, 2020.

Participant Details

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Outline of submissions

We anticipate the remarks will take 10-15 minutes and will discuss the following:

1. The Project directly and adversely effects Ermineskin’s ability to practice their Treaty and Aboriginal rights

The Project is located within Ermineskin’s traditional territory. More precisely, it is within the core area visited by community members to practice their Treaty rights today and for generations.¹

The Project area has become increasingly important to Ermineskin harvesters. A traditional knowledge and use report prepared for Ermineskin found that the Project area has grown in importance due to

“... the cumulative effects of industrial development, which have reduced the abundance of big game on Crown lands to the north and to the west of Ermineskin Reserve 138. ... the Project area represents one of the least disturbed, accessible areas for [Ermineskin] land users.”²

The declining availability of Crown lands for hunting requires Ermineskin hunters to rely on private lands – including the proposed Project area - to exercise their constitutionally protected Treaty and Aboriginal rights, and practice and transmit their traditional way of life and culture to future generations.³

Ermineskin provided Alberta Transportation with a study titled *Traditional Knowledge and Use Study: Springbank Off-Stream Reservoir Project*, which identifies the traditional land use in the Project area. This report will form part of Ermineskin’s evidence at the Hearing.

¹ *Traditional Knowledge and Use Study Springbank Off-Stream Reservoir Project* at p 3 [TKU Study].

² TKU Study at p 5.

³ TKU Study at p 6.

2. Major issues to be examined at the hearing

Ermineskin recommends examining the following major issues at the Public Hearing in the spring (the “**Hearing**”):

- Impacts to Treaty and Aboriginal rights practice.
- Cumulative impacts of loss of land.
- Impacts to wildlife and plant species of special importance (including elk, eagle, Grizzly bear, and medicinal plants).
- The Government of Alberta fulfilling the honour of the Crown in satisfying their obligations under the duty to consult and accommodate.

The NRCB’s consideration of the “public interest having regard for the social, economic and environmental effects” must take into account the unique and special relationship of Treaty users, including Ermineskin, to the land. Ermineskin currently enjoy access to the Project land use area for Treaty and Aboriginal rights use (including harvesting plants and animals). The proposed Project will have a direct and adverse effect on this use.

3. Hearing format, location, and timing

Ermineskin recommends the following format:

- opening of the hearing with a meaningful land acknowledgement by the NRCB panel that reflects the unique relationship between Indigenous nations located within Alberta’s borders and the Government of Alberta;
- video-conference with call-in option and recording (in the event the internet connection is not stable);
- recorded audio and video made available for all participants after the hearing;
- oral submissions (supplemented by filed written submissions and evidence) by participants;
- notwithstanding section 9(1) of the Rules of Practice of the Natural Resources Conservation Board Regulation, Alta Reg 77/2005 (the “**Rules**”) , which mandates a minimum 30-day notice period, Ermineskin requests 60-days notice prior to the hearing to allow for proper preparation of evidence and submissions.

We anticipate that travel and gathering restrictions due to COVID-19 will be in place during the expected date range for the hearing. If this changes then Ermineskin may consider an in-person hearing.

4. Ermineskin requests advanced funding

The Project directly and adversely effects Ermineskin's ability to practice the rights protected under s. 35 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11*. As such, Ermineskin will request advanced funding for their participation in the NRCB process pursuant to s. 28 and 37 of the Rules.

Closing

In summary, Ermineskin's submission at the Pre-Hearing will discuss: the direct and adverse effect of the Project on Ermineskin Treaty and Aboriginal rights; major issues to be discussed at the hearing; the format of the Hearing; and a request for advanced funding.

Yours truly,

JFK Law Corporation

Per:



Blair Feltmate

BLF

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