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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 Blood Tribe/Kainai (“**Kainai**”) 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 Kainai 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 Kainai's ability to practice their Treaty and Aboriginal rights

The Project is located within Kainai's historical use and occupancy area. More precisely, the Project area is part of a historical Blackfoot seasonal route between the Bow and Milk Rivers. The area has been occupied by private landowners since the 1880s but remains an area of high traditional use for the Blackfoot Confederacy and Kainai in particular.¹

The Project area has become increasingly important to Kainai harvesters due to the increase in industrial development and recreational use in the area. The declining availability of Crown lands for hunting requires Kainai 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.

Kainai provided Alberta Transportation with a report 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 Kainai's evidence at the Hearing.

2. The Project area contains Blackfoot historical and archaeological features

Field reports of the Project area indicate the presence of:

- Blackfoot traditional trails;
- winter camps (tipi rings, fire broken rocks);
- medicine wheels; and
- buffalo-rubbing rocks.²

¹ Blood Tribe/Kainai Traditional Knowledge, Land, and Resource Use Study: Springbank Off-Stream Reservoir Project (June 2018) at p 11 [*TLU Report*].

² TLU Report at p 11.

Kainai provided Alberta Transportation with GIS coordinates of many of these features and will include these as evidence at the Hearing.

3. Major issues to be examined at the hearing

Kainai 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).
- Impacts to historical and archaeological features located in the Project area (including medicine wheels, tipi rings, fire-broken rocks, buffalo-rubbing rocks).
- 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 Kainai, to the land. Kainai 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.

4. Hearing format, location, and timing

Kainai 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, Kainai 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 Kainai may consider an in-person hearing.

5. Kainai requests advanced funding

The Project directly and adversely effects Kainai'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, Kainai will request advanced funding for their participation in the NRCB process pursuant to s. 28 and 37 of the Rules.

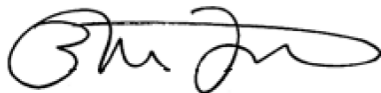
Closing

In summary, Kainai's submission at the Pre-Hearing will discuss: the direct and adverse effect of the Project on Kainai 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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