

**NATURAL RESOURCES CONSERVATION BOARD  
NOTICE OF PRE-HEARING CONFERENCE**

**APPLICATION NO. 1701  
ALBERTA TRANSPORTATION SPRINGBANK OFF-STREAM RESERVOIR PROJECT**

**PRE-HEARING CONFERENCE JOINT SUBMISSION OF THE  
CALGARY RIVER COMMUNITIES ACTION GROUP AND FLOOD FREE CALGARY**

**NOVEMBER 20, 2020**

**A. INTRODUCTION**

On November 3, 2017, Alberta Transportation applied to the Natural Resources Conservation Board (**NRCB**) to construct the Springbank Off-Stream Reservoir Project, an off-stream reservoir on the Elbow river upstream of the city of Calgary near Springbank, Alberta (**SR1 Project**). The SR1 Project and the Glenmore reservoir in Calgary will work in tandem to accommodate water volumes equal to the 2013 flood. The application includes an Environmental Impact Assessment (**EIA**) prepared in accordance with terms of reference set out jointly by the NRCB, Alberta Environment and Parks (**AEP**), and other provincial government agencies.

On November 6, 2017, AEP and the NRCB issued a joint Notice of Filing indicating that the application had been received and would not be considered complete until it has been reviewed and any deficiencies supplemented. Alberta Transportation continues to respond to supplemental information requests issued by the NRCB, AEP and other government agencies.

On September 23, 2020, the NRCB issued a letter informing parties that the review process for the SR1 Project would include a public hearing and a pre-hearing conference and that a hearing could take place as early as February 2021. That letter was followed on October 5, 2020 by a Notice of Pre-Hearing Conference indicating that a virtual pre-hearing conference would be held on December 2, 2020. The NRCB has noted that the following agenda items would be considered at the pre-hearing conference:

- (a) a discussion of the major issues to be examined at the hearing;
- (b) the appropriate scope and jurisdiction of the review;
- (c) the location for a hearing, the hearing format, the appropriate timing of a hearing, and deadlines for filing hearing submissions (including evidence);
- (d) a discussion of procedures to be followed at the hearing;
- (e) applications for advance funding, including eligibility of individuals to apply for intervenor funding; and
- (f) other matters.

The NRCB has invited interested parties, Indigenous groups, representatives from Alberta Transportation, and other government authorities who wish to make a presentation at the pre-hearing conference to provide a statement of intent to participate and a written summary of their

submission. This is the submission of Calgary River Communities Action Group (**CRCAG**) and Flood Free Calgary (**FFC**) in response to the NRCB invitation.

## **B. CALGARY RIVER COMMUNITIES ACTION GROUP AND FLOOD FREE CALGARY**

CRCAG and FFC intend to actively participate in the pre-hearing conference and hearing on the SR1 Project application.

CRCAG is a non-partisan advocacy organization<sup>1</sup> of approximately 1,000 members comprised primarily of individual homeowners and residents who were directly and catastrophically impacted by the June 2013 flood that devastated the city of Calgary. Most CRCAG members reside in one of the over 32 communities in Calgary that were flooded. CRCAG was formed in the immediate aftermath of the 2013 flood and its mandate includes:

- to advocate for construction of large-scale flood mitigation infrastructure to provide the city of Calgary protection for at a minimum a 1 in 200-year scale flood event on the Elbow River, and
- to participate in legal and regulatory proceedings as deemed necessary in furtherance of advocating for particular flood mitigation infrastructure projects<sup>2</sup>.

CRCAG has, since inception of the SR1 Project shortly after the 2013 flood, tirelessly lobbied all levels of government and filed submissions to relevant federal and provincial authorities in support of the SR1 Project.

FFC is a Calgary-based interest group representing over 40 businesses, business associations, community associations, and other organizations who are focused on protecting Calgary businesses from the effects of flooding. The group was established in 2017 and has actively represented local businesses in advocating for effective flood mitigation for the City of Calgary, including the SR1 Project.

Having taken nearly seven years to arrive at this stage of the regulatory process, the SR1 Project is considered by CRCAG and FFC to be the only prospect of implementing effective flood mitigation for the city of Calgary in the foreseeable future. Simply put, failure to complete the SR1 Project is, effectively, a decision that no upstream mitigation should be built on the Elbow River.

CRCAG and FFC strive to be the voice of the individuals and businesses who were impacted by the flood of 2013 and stand to be directly, significantly and positively affected by the SR1 Project. CRCAG and FFC intend to present evidence regarding the negative impacts of flooding that the SR1 Project is designed to prevent. CRCAG and FFC submit that this information will assist the NRCB in assessing whether the SR1 Project is in the public interest.

## **C. MAJOR ISSUES**

For the reasons that follow, CRCAG and FFC respectfully request that the NRCB confirm in its Pre-Hearing Conference Report that prevention of negative social, economic and environmental

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<sup>1</sup> CRCAG is incorporated under the Alberta *Societies Act*.

<sup>2</sup> [www.protectcalgary.com/about/](http://www.protectcalgary.com/about/)

effects resulting from flooding are positive effects of the SR1 Project and are properly before the NRCB in this proceeding.

Section 2 of the *Natural Resources Conservation Board Act (Act)* sets out the purpose of the Act as follows:

2 The purpose of this Act is to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the [NRCB's] opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment.

CRCAG and FFC therefore submit that the major issues to be considered in the hearing would be those issues necessary to determine whether the SR1 Project is in the public interest, and that this determination would include consideration of *both* the *negative and positive* social, economic, and environmental effects of the SR1 Project. This is consistent with the NRCB's November 2018 decision approving the construction and operation of a debris flood retention structure on Cougar Creek in Canmore, Alberta, where the positive social and economic effects of the project supported the NRCB's conclusion that the project is in the public interest<sup>3</sup>.

CRCAG and FFC submit that 'project need and justification' is a basic issue that must also be addressed in determining the public interest and one which will be the focus of the CRCAG and FFC intervention. Specifically, CRCAG and FFC will address the critical importance of the SR1 Project to avoid the harmful environmental, social and health effects and extensive financial losses associated with major flood events like the one experienced in 2013.

#### **D. APPROPRIATE SCOPE AND JURISDICTION OF REVIEW**

CRCAG and FFC understand that the NRCB's mandate is to consider whether a project is in the public interest having regard for the social, environmental and economic effects of the project. CRCAG and FFC submit that these are the issues to which the panel should direct its review in the consideration of the SR1 Project.

#### **E. LOCATION, FORMAT AND TIMING OF HEARING AND SUBMISSION DEADLINES**

CRCAG and FFC urge the NRCB to hold a public hearing for the SR1 Project at the earliest possible opportunity and support the scheduling of the hearing in February 2021.

Time is of the essence for the SR1 Project to be approved and constructed to avoid the catastrophic impacts of another flood in Calgary. Over seven years have passed since the flood of 2013. Based on the historical record, it is simply a matter of time before another flood of similar or greater magnitude will impact Calgary and downstream communities. The SR1 Project must be approved and constructed as soon as possible in order to protect Calgarians and other Albertans from the effects of flooding. CRCAG has previously reported<sup>4</sup> on the impacts of the

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<sup>3</sup> Board Decision NR 2018-01, NRCB Application No. 1601, Town of Canmore, Construct and Operate a Debris Flood Retention Structure on Cougar Creek in Canmore, Alberta, November 2019, para 348. Available online at: [https://www.nrcb.ca/download\\_document/2/104/6002/decision-nr-2018-01](https://www.nrcb.ca/download_document/2/104/6002/decision-nr-2018-01).

<sup>4</sup> [www.protectcalgary.com](http://www.protectcalgary.com)

2013 flood, which is only the third largest flood to impact Calgary. Such impacts included, but were not limited to, the following:

- City Hall was severely flooded and not re-opened for several months;
- the Saddledome and the Stampede grounds were devastated, as the entirety of the East Village was deluged;
- the Calgary Zoo was under water;
- large swaths of the downtown core were flooded or rendered inaccessible;
- thirty-two communities in Calgary were evacuated, which affected approximately 80,000 people;
- thousands of homes were damaged or destroyed;
- four thousand businesses were impacted;
- approximately 5.1 million work hours were lost in the private sector;
- there was an estimated \$1.8 billion in direct damages in Calgary, with Alberta-wide recovery adding up to upwards of \$6 billion; and
- tragically, five lives were lost.

Some small-scale local mitigation has been undertaken. However, little has changed since the 2013 flood in terms of large-scale flood mitigation infrastructure to protect the city of Calgary, its residents, landowners, and business owners from future flood impacts such as those outlined above. Furthermore, climate change is expected to increase the frequency of flood events due to expected increases in temperature and precipitation within the Elbow River watershed<sup>5</sup>. This increasing risk highlights the urgent need for action and demands a prompt hearing on, and in CRCAG's and FFC's submission, approval of this critical infrastructure project.

Importantly, there has been considerable public awareness of the SR1 Project in Calgary, Springbank and surrounding communities for well over five years. Alberta Transportation has undertaken a comprehensive consultation program which began in August of 2014 and included landowners, the public and Indigenous communities. The SR1 Project has been progressing through the federal and provincial environmental assessment process since 2015. The NRCB application was filed in November of 2017, and the NRCB provided early notice of the hearing in its September 23, 2020 letter, indicating that one could be held as early as February 2021. Interested parties have had and will yet have ample time to prepare for a hearing in that timeframe. A February 1, 2021 hearing date would provide almost 19 weeks' notice from the September 23, 2020 date of the letter informing parties that a hearing would be held.

Regarding the filing of submissions, including evidence, CRCAG and FFC support a deadline for filing submissions that is one to two weeks prior to the start of the hearing.

CRCAG and FFC recognize that the current Covid-19 pandemic may not allow for an in-person hearing. CRCAG and FFC are prepared to participate in whatever format and at whatever location will facilitate the efficient and timely completion of the hearing process. A tentative schedule

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<sup>5</sup> Alberta Transportation, IR Package 3, August 31, 2018.

established by the NRCB which sets out when CRCAG and FFC can be expected to speak to their evidence would be of assistance so that witnesses can ensure their availability.

#### **F. PROCEDURES TO BE FOLLOWED AT HEARING**

CRCAG and FFC submit that the NRCB's usual hearing procedures, modified for a virtual format if necessary, would be appropriate. This would include opportunities to provide direct oral evidence (limited in duration), cross-examination and final argument.

#### **G. OTHER MATTERS – STANDING AND INTERVENOR FUNDING ELIGIBILITY**

CRCAG hereby requests a determination of its eligibility for intervenor funding.

Subsection 11(1) of the Act provides for intervenor funding as follows:

**11(1)** Individuals or groups of individuals who, in the opinion of the [NRCB], are or may be directly affected by a reviewable project are eligible to apply for funding under this section.

A review of prior NRCB decisions on intervenor funding eligibility, as well as the NRCB Intervenor Funding Process Guide and the NRCB Rules of Practice, confirms that there are two criteria for establishing funding eligibility: (1) being an individual or group of individuals, and (2) being directly affected by the proposed project.

CRCAG represents members that may be directly affected by the SR1 Project. Most members of CRCAG either own or live on lands that were directly and catastrophically impacted by the flood and stand to be protected by the SR1 Project. CRCAG's goals and objectives are specifically and exclusively related to flood mitigation, which is the sole objective of the SR1 Project. From the formation of CRCAG, its mandate has been to advocate for large-scale flood mitigation infrastructure and to participate in regulatory proceedings to advocate for such infrastructure. The SR1 Project and this proceeding fall squarely within this mandate.

The direct effects (protection) anticipated from the SR1 Project are the direct (positive) effects on the individual members of CRCAG, rather than direct effects on CRCAG as a group. CRCAG's intervention on behalf of its many members is intended to increase efficiency by coordinating submissions, reducing duplication of evidence, and managing the costs of representation.

With respect to the second, "directly affected", criterion, CRCAG submits that the SR1 Project would cause a detectable beneficial impact on its members in providing protection from the negative impacts on health, livelihood, and property rights resulting from flooding. These impacts would be personal and individual in nature and therefore different, special or unique from effects that may be experienced by any other citizens living in Alberta. The intervention of CRCAG would also satisfy the "closeness test" adopted to determine if an intervenor is directly affected by a project. There is an uninterrupted chain of causality between the SR1 Project and the positive effects on CRCAG members. There is no doubt that the positive effects will occur when Calgary experiences another major flood event. And the positive effects in terms of protecting CRCAG members' livelihood, health, and property rights would be far from trivial.

CRCAG seeks an advance ruling from the NRCB regarding its eligibility to receive intervenor funding. In order to effectively and efficiently participate in the review process and assist in the

preparation and presentation of its intervention, including the preparation and presentation of evidence, cross-examination and preparation and delivery of oral argument, CRCAG requires specialized legal assistance. CRCAG has carefully considered the functions that require such legal expertise as opposed to other functions that can be handled by CRCAG and its members (such as the organization and initial drafts of CRCAG's submissions and evidence).

CRCAG and FFC look forward to participating in the NRCB's review of the SR1 Project.

All of which is respectfully submitted this 20<sup>th</sup> day of November, 2020.

**Torys LLP, Counsel for CRCAG and FFC**



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**Luigi A. Cusano, QC**



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