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To: [Laura Friend](#)
Cc: [Kristina Banfill](#); [Jeff Langlois](#); [Ermineskin](#); rkruhlak@mross.com
Subject: Application Form - Intervener Funding Advance Award of Costs - Ermineskin Cree Nation
Date: Tuesday, December 1, 2020 10:20:11 AM
Attachments: [Application Form - Intervenor Funding Advance Award of Costs - Ermineskin.pdf](#)

Please see the attached application form for an advanced cost award for Ermineskin Cree Nation as noted in the submissions provided on November 20, 2020. I had initially expected our client would be able to file this application after the Pre-Hearing Conference but upon guidance from Mr. Kennedy, who indicated it would be beneficial to have the application details in front of the Board at the Pre-Hearing Conference, we are submitting it ahead of the Pre-Hearing. I recognize that we are a day out from the hearing but I note that our advanced cost application is quite simple with only legal fees and staff fees to account for.

I hope that the Board will consider this and I will speak to this application form as part of the submissions given tomorrow. Thank you for consideration of this application and I look forward to the Pre-Hearing Conference tomorrow. Please note that counsel for Alberta Transportation has been cc'd on this email.

Thank you,
Blair

Blair Feltmate

(he/his/him)

Associate

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APPLICATION FORM

Intervener Funding Advance Award of Costs

STEP 1 – GENERAL CONSIDERATIONS IN FILING YOUR APPLICATION

To help the NRCB process your application, please be as thorough as possible in providing the information requested in the attached format. A properly completed form will speed up the processing.

Your Request for an Advance Award of Costs must be submitted to the Board and to the project applicant by the date specified by the Board.

There is no guarantee that any or all of your costs will be awarded. You must first qualify for costs (see the Intervener Funding Process Guide) and then only reasonable costs will be awarded.

STEP 2 – YOUR MAILING INFORMATION

NRCB Application No: 1701

Applicant: Ermineskin Cree Nation

Name(s) of Intervener(s) *(attach a list if necessary)*
[Nations]

Ermineskin Cree Nation

Note: Attach written authorization by "directly affected" individuals or groups of individuals where a formal association has been requested to represent their concerns and outline specific impacts to be addressed.

Was a group or coalition formed to intervene in this application? Yes _____ No X

If yes, name of group: _____

Name of intervener or group representative: Carol Wildcat

Mailing and email address and local telephone number for intervener or group:

Mailing Address: Ermineskin Cree Nation
PO Box 219
Maskwacis, AB T0C 1N0

Telephone Number: 780-585-2550

Email Address: carol@ermineskin.ca

Has a copy of this request (with supporting documentation) been sent to the proponent or its lawyer?

Yes No

STEP 3 – JUSTIFICATION OF CLAIM

Attach the following information:

- describe the extent to which the intervener will be undertaking on the intervener's own behalf the preparation and presentation of the submission;
- the controls the intervener has in place for the expenditure of any advance funding received;
- the reasons why funds are required in advance;
- a detailed forecast of the total cost of the intervention, the amount that you expect to claim in any final claim for costs and the amount of advance funding sought; and,
- a detailed description of the information that you intend to include in your submission and how such information may assist the Board in assessing the social, economic or environmental effects from the reviewable project.

Attached as Appendix A

STEP 4 – ELIGIBILITY FOR FUNDING

Provide detailed evidence to support your claim as to why you are or may be "directly affected" by the proposed application. Attach this information to your claim.

It is recommended that interveners review the NRCB's Intervener Funding Process Guide. Submissions should identify detectable effect on the directly affected party and evidence of an uninterrupted chain of cause and effects between the proposed project and the individual or group of individuals. Effects noted should not be trivial in nature.

Attached as Appendix B

STEP 5 – THE DETAILS OF YOUR REQUEST FOR AN ADVANCE AWARD OF COSTS

1. INTERVENER

	Honoraria	Expenses
a) Forming a group *	\$ _____	\$ _____
a) Preparing a submission *	\$ _____	\$ <u>500</u>
b) Attending a hearing (½ days x \$50)	\$ <u>300</u>	\$ <u>\$300</u>
Subtotals	\$ <u>300</u>	\$ <u>800</u>

TOTAL PERSONAL CLAIM OF INTERVENER	
Subtotals A + B =	<u>\$1100</u> (line 1)
Please transfer total to Section 6 – Line 1 (Page 21)	

* Normally the total of these two amounts will not exceed \$500

2. LAWYER

Name: JFK Law Corporation

- Senior Counsel: Jeff Langlois (Rate: \$375.00)
- Junior Counsel: Blair Feltmate (Rate: \$230.00)

Mailing Address: JFK Law Corporation
340 – 1122 Mainland Street
Vancouver, BC V6B 5L1

Telephone Number: 604-687-0549

TOTAL FEES & DISBURSEMENTS FOR LAWYER'S SERVICES Breakdown of Lawyer's Account		
a) Fees for preparation of submission	8 hrs x \$ 375.00 /hr	\$ 3,000.00 (Sr.)
	40 hrs x \$ 230.00 /hr	\$ 9,200.00 (Jr.)
b) Fees for attendance at hearing	24 hrs x \$ 375.00 /hr	\$ 9,000.00 (Sr.)
	24 hrs x \$ 230.00 /hr	\$ 5,520.00(Jr.)
c) Disbursements		\$ n/a

TOTAL CLAIM RESPECTING LAWYER'S ACCOUNT	
	\$ <u>26,720</u> (line 2)
Please transfer total to Section 6 – Line 2 (Page 21)	

** claimed legal costs should be for legal services only (See Intervener Funding Process Guide, Legal Costs, Page 14)*

3. EXPERT/CONSULTANT

Name: N/A

Mailing/Email Address: *(where there is more than one expert or consultant, please attach additional information)*

Telephone Number: _____

Services to be Performed: *(attach work specifications for each consultant/expert)*

Total Fees and Disbursements: *(attach accounts)*

Breakdown of Accounts

a) Preparation of submission	_____ hrs x \$ _____/hr	\$ _____
b) Attendance at hearing	_____ hrs x \$ _____/hr	\$ _____
c) Costs of drafting, administrative services, etc. (if applicable, attach a separate breakdown)	_____ hrs x \$ _____/hr	\$ _____
d) Total disbursements		\$ _____

TOTAL CLAIM RESPECTING EXPERT/CONSULTANT ACCOUNT(S)

\$ 0.00
(line 3)

Please transfer total to Section 6 – Line 3 (Page 21)

* Note: *Personal services already compensated for by others in the form of hourly employment or regular salary will not be compensated for in a cost award (See Intervener Funding Process Guide, Costs of an Expert, Page 15)*

4. WITNESS FEES

N/A

(for persons who appear at a hearing to give evidence but who are not interveners making a claim under Step 5, Item 1c)

- a) Meeting with a lawyer _____ witnesses x _____ ½ days at \$50 \$ _____
- b) Attendance at a hearing to give evidence _____ witnesses x _____ ½ days at \$50 \$ _____

<p>TOTAL CLAIM RESPECTING WITNESS(ES) FEES</p> <p style="margin-left: 200px;">\$ <u>0.00</u> (line 4)</p> <p>Please transfer total to Section 6 – Line 4 (Page 21)</p>
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5. INTERVENER VOLUNTARY CONTRIBUTION

Attach a summary of your voluntary contribution to this intervention. Provide as much detail as possible including anticipated hours to be contributed, tasks performed and types of expenses which may be incurred.

Total Intervener Voluntary Contribution: \$4,100

Details attached as Appendix C

6. SUMMARY OF FUNDING REQUESTED

(please transfer totals from preceding sections to the appropriate lines below)

Intervener(s)	(from line 1)	\$ <u>1,100.00</u>
Lawyer	(from line 2)	\$ <u>26,720.00</u>
Expert(s)/Consultant(s)	(from line 3)	\$ <u>n/a</u>
Witness(es)	(from line 4)	\$ <u>n/a</u>

7. TOTAL AMOUNT OF INTERVENER FUNDING REQUESTED

Total Request (total of lines 1-4)	=	\$ <u>27,820</u>
Total amount sought as an advance award =		\$ <u>27,820</u>

PLEASE SEND YOUR COMPLETED APPLICATION AND COPIES OF SUPPORTING DOCUMENTS DIRECTLY TO THE NRCB AND THE PROPONENT:

- 1) **Natural Resources Conservation Board**
19th floor, 250 – 5 Street SW
Calgary, AB T2P 0R4

Email: laura.friend@nrcb.ca
Phone: (403) 297-8269 **Toll-Free:** 310-0000

- 2) The proponent's lawyer, if any, or to the proponent at its business address.
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Appendix A: Justification of Claim

Ermineskin Cree Nation's ("**Ermineskin**") counsel with direct instruction, guidance, and engagement will prepare the submission from senior members of the Ermineskin's administration. Further, each piece of evidence in the submission will be reviewed thoroughly by Ermineskin's senior administration.

Ermineskin is an Indigenous government with a full-time staff capable of managing expenditures. In regard to legal fees, Ermineskin's counsel is held to strict ethical rules regarding invoicing for legal fees.

The funds are required in advance to facilitate Ermineskin's continued involvement in the regulatory process for the SR-1 Project. As many Indigenous nations experience, there is a significant number of projects occurring in Ermineskin's traditional territory and consequently a large burden on consultation departments who seek to be engaged in these processes. As a result, compensation and legal support are required. Advance funding is necessary to ensure sufficient funding to continue to engage in these regulatory processes without being forced in to making concessions and compromises.

We expect the total cost of the intervention to be \$31,920 (funding request plus voluntary contribution). The advance funding request is for the amount \$27,820. The amount requested in the advance funding request is an estimate and we reserve the right to seek additional funding as part of the final claim costs.

The submission from Ermineskin will include detailed descriptions and evidence of:

- impacts to Treaty and Aboriginal rights practice;
- cumulative impacts of loss of land; and
- impacts to wildlife and plant species of special importance (including elk, eagle, grizzly bear, and medicinal plants).

In particular, the submissions at the Hearing will draw on traditional land use evidence solicited through interviews with traditional land users that showcase a high level of use in the area by Ermineskin members. This information will assist the Board in assessing the social, economic, or environmental impacts of the Project on:

- constitutionally protected Treaty rights (social);
- the relationship between the Alberta Government and Indigenous nations within Alberta's borders (social);
- the ability for Ermineskin members to maintain a culture and way of life in the Project area (social);
- the cumulative impacts of land use in the area on Indigenous communities; and
- the impact of the Project on the wildlife, plant species, and the natural environment.

Appendix B: Eligibility for Funding

Through a multi-year consultation process under both CEAA, 2012 and the NRCBA, Ermineskin have been consistently engaged by the Proponent and the Impact Assessment Agency of Canada (or the Canadian Environmental Assessment Agency as it was at the start of the process) (the “**Agency**”). Consequently, Ermineskin have been involved in technical advisory group meetings, discussion of mitigation measures, and have met multiple times with the Agency and the Proponent.

The project will have a direct and adverse effect on Ermineskin’s ability to exercise their Treaty rights in the Project area.

Direct effects on Ermineskin

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.”

Ermineskin 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 Ermineskin’s evidence at the Hearing.

Ermineskin has demonstrated that they use the Project area for the practice of their rights. This is done on land currently held privately through agreements and relationships. The Project is expected to convert this private land into Crown land and reduce the area available for Ermineskin traditional users.

Additional direct effects

Further, the Project will have a direct and adverse effect on wildlife quantity and movement patterns through the area – during construction, operation, and in the event of flood.

In addition, the Project will have a direct and adverse effect on traditional and medicinal plants in the area through construction and flood events.

The current mitigation measures, as proposed by Alberta Transportation, do not adequately mitigate the loss of area to practice Treaty rights, the impact on wildlife, nor the effect on plants.

Please note that the oral submissions made at the pre-hearing on Dec 2, 2020 will speak to the question of eligibility as well.

Appendix C: Intervener Voluntary Contribution

It is anticipated that staff of Ermineskin will spend considerable time reviewing materials, meeting with and guiding submissions by counsel, reviewing and authorizing the final submission made to the hearing, and attending the hearing.

It is estimated that Ermineskin staff will spend 1 day reviewing the NRCB materials, 1 day meeting with and guiding submissions by counsel, 1 day reviewing and authorizing the final submission, and 3 days attending the final hearing. In addition, we expect an elder be present at each of the hearing days at a cost of \$300 per day.

At a cost of \$300 per day plus \$900 for the attendance of an elder, the contribution of Ermineskin will be \$2,700 less the \$1,100 requested through this funding request.

Additionally, Ermineskin is responsible for any legal costs incurred outside of what is covered by the NRCB. This includes unexpected costs, and any margin of error with their counsel's fee estimate. This number cannot be calculated with certainty but a conservative contingency of 10% of the legal fee estimate is appropriate. Therefore the contingency Ermineskin must cover is approximately \$2,500.

Total Intervener Voluntary Contribution: \$4,100