

From: [Blair Feltmate](#)
To: [Laura Friend](#)
Cc: [Mike Oka](#); [Kristina Banfill](#); [Jeff Langlois](#); rkruhlak@mross.com
Subject: Application Form - Intervenor Funding Advance Award of Costs - Blood Tribe
Date: Tuesday, December 1, 2020 10:22:10 AM
Attachments: [Application Form - Intervenor Funding Advance Award of Costs - Blood Tribe.pdf](#)

Please see the attached application form for an advanced cost award for Blood Tribe/Kainai 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

JFK Law Corporation

340 – 1122 Mainland Street

Vancouver BC V6B 5L1

T 604 687 0549 ext 118 **C** 604 831 7804
F 604 687 2696 **E** bfeltmate@jfklaw.ca
www.jfklaw.ca

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

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: Blood Tribe (Kainai)

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

Blood Tribe (Kainai)

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: Mike Oka

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

Mailing Address: Blood Tribe
Box 60
Standoff, AB T0L 1Y0

Telephone Number: 403-737-3753

Email Address: Mike.Oka@bloodtribe.org

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>\$1,100</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

\$ 26,720
(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

(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>\$ <u>0.00</u></p> <p>(line 4)</p> <p>Please transfer total to Section 6 – Line 4 (Page 21)</p> |
|---|

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.

Voluntary Contribution Total: \$1,700

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.**
-

Appendix A: Justification of Claim

The submission will be prepared by Blood Tribe's ("Kainai") counsel with direct instruction, guidance, and engagement from senior members of the Kainai's administration. Further, each piece of evidence in the submission will be reviewed thoroughly by Kainai's senior administration.

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

The funds are required in advance to facilitate Kainai'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 Kainai'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 \$32,820 (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 Kainai 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 Kainai 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 Kainai 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, Kainai 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, Kainai 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 Kainai.

Direct effects on Treaty 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.

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.

Further, 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.

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.

In the Environmental Impact Assessment filed by Alberta Transportation in December 2018 Volume 3B at p 14.20, the Proponent referenced impacts that had been raised by Blood Tribe, including:

- sediment deposition has the potential to:
 - destroy ceremonial sites, burial sites, and cultural landscapes or to prevent their future use if the sites are no longer visible;
 - affect wildlife, fish, and plants, and hunting, trapping, fishing, and plant gathering;
 - result in loss of land area for harvesting activities due to sediment deposit
 - affect air quality by wind transporting flood residue
- sites identified, including a trail, tipi rings, a medicinal and ceremonial plant locale, Blackfoot traditional camp sites (with multiple tipi rings, fire-broken rock, a spearhead, and possible medicine wheel)

Kainai 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 Kainai traditional users. This is a direct and adverse impact.

Additional direct and adverse 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 or the impact on plants and wildlife.

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 Kainai 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 Kainai 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. We also anticipate an elder will attend each day of the hearing at a cost of \$500 per day.

At a cost of \$350 per day plus an additional \$1,500 for an elder, the voluntary contribution of Kainai will be \$3,600 less the \$1,100 requested from the NRCB.

Additionally, Kainai is responsible for any legal costs incurred outside of what is covered by the NRCB funding decision. 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 Kainai must cover is approximately \$2,500.

Total Intervener Voluntary Contribution: \$5,000