

NATURAL RESOURCES CONSERVATION BOARD

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Application No. 1701

SPRINGBANK OFF-STREAM RESERVOIR PROJECT

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P R O C E E D I N G S

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Volume 1

February 4, 2021

(Via videoconferencing)

1 Natural Resources Conservation Board Proceedings taken  
 2 virtually in Calgary and Edmonton, Alberta.

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4 Volume 1

5 February 4, 2021

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Peter Woloshyn	Chair
Sandi Roberts	Commission Member
Walter Ceroici	Commission Member
Daniel Heaney	Commission Member

9

William Kennedy	Commission Counsel
Fiona Vance	Commission Counsel

10

Laura Friend	Commission Staff
Michael Iwanyshyn	Commission Staff
Scott Cunningham	Commission Staff
Stephanie Fleck	Commission Staff
Janet Harvey	Commission Staff
Justin Wiebe	MNP Technologies

11

12

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14

L. Douglas Rae	For Stoney Nakoda Nation
Sara Loudon	
William Snow	(Participant)

15

16

17

Richard Secord	For SR1 Concerned Landowners
Ifeoma Okoye	Group
Mary Robinson	(Participant)
Karin Hunter	(Participant)
David Klepacki	(Participant)

18

19

20

Ron Kruhlak, Q.C.	For Alberta Transportation
Gavin Fitch, Q.C.	
Michael Barbero	
Matthew Hebert	(Participant)
Terra Cook	(Participant)
Jennifer Hallson	(Participant)
Wayne Speller	(Participant)
Keith Monteith	(Participant)

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22

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24

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(See page 2 for continued appearances)

1 Melissa Senek For The City of Calgary  
 Sara Munkittrick  
 2 Frank Frigo (Participant)  
 Justin Lo (Participant)  
 3  
 4 Gino Bruni For Calgary River Communities  
 Action Group and Flood Free  
 5 Calgary  
 6  
 Lorelee Vespa CSR(A) CRR RPR Official Court Reporter  
 7

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8  
 9 (PROCEEDINGS COMMENCED AT 1:31 P.M.)

10 THE CHAIR: Good afternoon, everyone, and  
 11 welcome.

13:31

12 My name is Peter Woloshyn, and I'll be chairing  
 13 the Panel for SR1 and today's conference, of course.

14 So this sort of mini-hearing is with respect to  
 15 the January 20th, 2021, Stoney Nakoda application to  
 16 adjourn the already set March 22nd hearing start date  
 17 for a minimum of three months.

18 So, just at the outset -- and our notice, I think,  
 19 also refer to this -- the Board has already decided  
 20 that Stoney Nakoda is a directly affected party and are  
 21 eligible for advance funding, and I note that  
 22 Transportation took no exception to that, as I don't  
 23 think anyone else did either.

13:31

24 We may have a few questions, if time allows, on  
 25 the funding request for Stoney, but that's not the

1 purpose of today, only if time allows.

2 So I would like to introduce the Panel members to  
3 you. We've got -- and maybe if you can stick your hand  
4 up -- it's a little bit different than, I think, when  
5 we ran the pre-hearing conference on December 2nd,  
6 we've got everybody sort of live, so you may have to  
7 kind of scroll through -- we've got speaker view, so  
8 you may have to scroll through to see folks, but the  
9 Panel members all have the same background that I do  
10 with "NRCB" up in the corner and a picture of Canmore  
11 in the background; and we've got Walter Ceroici -- so,  
12 Walter -- and Sandi Roberts, and Dan Heaney. So the  
13 four of us are the Panel members for NRCB's review of  
14 SR1.

13:32

15 Our staff members will have all the same  
16 background as well, so you kind of identify the NRCB  
17 folks, and our NRCB counsel for the Panel is  
18 Bill Kennedy and Fiona Vance.

19 MS. VANCE: Good afternoon.

20 THE CHAIR: Laura, our manager, who many of  
21 you have been communicating with either on the phone or  
22 through emails is our manager of Board reviews.

13:33

23 And I'll give you a couple of numbers, Laura's is  
24 included. So if you have connection issues this  
25 afternoon, you can call Laura or Justin -- I'll give

1           you Justin's number in a second -- but Laura's number  
2           is area code 403 -- she's out of Calgary -- so  
3           403-620-3994. And thanks, Laura, for all the work  
4           you've done for getting this afternoon together.

5           We've got our environmental specialist, our senior  
6           environmental specialist, Mike Iwanyshyn, and I'd like  
7           to -- and in addition, we have Stephanie Fleck, and  
8           Scott Cunningham, and our NRCB communications  
9           specialist, Janet Harvey, who is out of Edmonton.

10           And court reporter -- court reporter, I think  
11           Lorelee Vespa; is that right?

13:34

12           THE COURT REPORTER:           Yes, that's correct. Thank you.

13           THE CHAIR:                        Perfect. And, Lorelee, can you  
14           hear me okay?

15           THE COURT REPORTER:           Yes, I can. Thank you.

16           THE CHAIR:                        All right. Thanks, Lorelee, for  
17           taking this on pretty short notice.

18           I'd also like to take the opportunity to introduce  
19           and thank NRCB's long-time IT provider, Next Digital,  
20           now Meyers Norris Penny -- they were brought under  
21           MNP's umbrella -- for hosting the conference and  
22           helping out with any IT issues we might have. So,  
23           Justin Wiebe, thank you very much.

13:34

24           And, Justin, are you online? Can people see you  
25           right now?

1 MR. WIEBE: They can't see me because I have  
2 multiple monitors, so I won't close my laptop, but I am  
3 listening in here, and if anyone needs a hand, you can  
4 let me know. You can open up the chat bar for chat or  
5 else I can give you my number, too, as well.

6 THE CHAIR: Sure. Go ahead with the number.

7 MR. WIEBE: It's 780-424-6398, extension 345.

8 THE CHAIR: Great. Thanks a lot, Justin. And  
9 any good IT provider will have three or four screens in  
10 front of them, I suppose.

13:35

11 MR. WIEBE: Yeah. Productivity.

12 THE CHAIR: Right.

13 Okay. So, before we get started with the  
14 proceedings, I would like to -- I mean, I guess this is  
15 part of the proceedings -- but I would like to give a  
16 First Nations acknowledgement, take the opportunity to  
17 acknowledge the traditional territories of which the  
18 project itself, and so many of you are located in and  
19 around the Calgary area. These lands are the  
20 traditional territory of the Blackfoot Confederacy and  
21 the people of Treaty 7 Nations of Southern Alberta,  
22 which includes: Siksika, Piikani, Kainai, Tsuut'ina,  
23 and the Stoney Nakoda First Nations, And the area is  
24 also home to the Métis Nation of Alberta Region 3. We  
25 respect the histories, languages, and cultures of First

13:36

1 Nations, Métis, Inuit, or First Peoples of Canada,  
2 whose presence continues to enrich our community.

3 And, of course, in normal times, we would all be  
4 together for this acknowledgement. However, given that  
5 we're all in different places today, or many of us are  
6 in different places, but all of which are home to  
7 First People. So I encourage you to take a moment,  
8 reflect on the land that we stand upon, and acknowledge  
9 our First Nations and Métis peoples.

10 So the documents pertaining to the proceeding have  
11 been assigned exhibit numbers. The exhibit list has  
12 been circulated and posted on the NRCB site. It's  
13 relatively straightforward this afternoon. There's not  
14 that many exhibits. I think that should be pretty easy  
15 to navigate.

13:36

16 We will ask participants to keep their microphones  
17 muted and turned off unless you're required to be  
18 speaking, just to minimize any interferences there; and  
19 I will keep my video on during the length of the  
20 hearing, as will other Panel members and Board counsel,  
21 Mr. Kennedy and Ms. Vance.

13:37

22 And the meeting is being transcribed, as I  
23 mentioned before, so I would ask you to speak slowly  
24 and clearly so that an accurate transcript can be  
25 prepared. It sometimes is even a little bit trickier

1 for the court reporters over Zoom, but so far so good.

2 And the court reporter, I encourage you to  
3 interrupt anybody if you're having trouble hearing them  
4 or if they're speaking too quickly. Just feel free to  
5 speak up so we get that transcript right.

6 And we'll post the transcript, I believe it's  
7 tomorrow, by tomorrow morning, so that should be  
8 available fairly quickly, and I am expecting that we'll  
9 be easily wrapped up this afternoon. I don't expect we  
10 may need the entire afternoon even, but we've got that  
11 set aside, and we'll sort of play it by ear. If we  
12 need a break, we'll just take one sort of -- I'll  
13 announce one sort of ad hoc, but hoping to get through  
14 these matters this afternoon relatively quickly.

15 So we'll register participants in a minute, just  
16 get everybody on the record.

17 Mr. Kruhlak contacted our legal counsel early this  
18 morning and proposed that we -- we had Stoney Nakoda  
19 going first, and then we had Alberta Transportation,  
20 that's sort of a different order, and his proposal is  
21 that Stoney Nakoda speaks to its application to adjourn  
22 first, and then we have anyone in support of that  
23 adjournment, so SCLG, and then we'll move on to other  
24 parties that are in opposition: Transportation, City  
25 of Calgary, the CRCAG group and, then, Stoney Nakoda,

13:38

13:38



1 at the very end, you can have an opportunity to respond  
2 to all the submissions. So if there's no objections --  
3 do I hear any objections to that reordering of the  
4 participant list and presentations?

5 Hearing none, we'll proceed on that basis.

6 And, essentially, it's pretty straightforward.  
7 Today, we're asking parties to speak to whether  
8 postponement should be granted or not, and your reasons  
9 for that, and if you are in support of a postponement,  
10 for what length of time would you be proposing.

13:39

11 So I'd like to formally register parties now. So  
12 I'll just call out folks' names, and who you are  
13 associated with, and if you could just identify you and  
14 who else is in the room with you as we go through the  
15 process.

16 So starting with Stoney Nakoda Nations, Mr. Rae  
17 and Mr. Snow.

18 MR. RAE: Thank you, Mr. Chairman.

19 It's Douglas Rae speaking, and my apologies, I'm  
20 going incognito today as "Trevor." That's so that you  
21 can't hold anything against me, what I say, It will be  
22 Trevor's fault. My apologies for that, sir.

13:40

23 I'm here with an associate from our office,  
24 Ms. Sara Louden, and, as well, the representative of  
25 the Stoney Nakoda Nations, Mr. William Snow, Bill Snow.

1           Those are the participants from the Stoney Nakoda  
2           Nations today.

3           THE CHAIR:                   Okay. Thank you. And the  
4           SR1 Concerned Landowners Group. Mr. Secord.

5           MR. SECORD:                   Yes, Richard Secord here, and with  
6           me, I see in the Zoom meeting, are Karin Hunter and  
7           Dave Klepacki, who will not be speaking, but are here.

8                   And also with me is Mary Robinson who is one of  
9           the large landowners in the actual area of the proposed  
10          project, and she will be speaking at some point. 13:41

11                   And I should just mention to Mr. Rae, if he would  
12          like to not be incognito, he can click on the  
13          participants' list. He can go to the name "Trevor" and  
14          click on that and rename himself "Douglas Rae" if he  
15          wants to. So just a suggestion, if he wants to take it  
16          up. Thank you.

17          THE CHAIR:                   Thank you, Mr. Secord.

18                   And Alberta Transportation. Mr. Kruhlak,  
19          Mr. Fitch.

20          MR. KRUHLAK:                Mr. Chairman, I'm actually located 13:41  
21          in Edmonton in Alberta Transportation's office, and  
22          with me here is Matthew Hebert and Terra Cook with  
23          Alberta Transportation, as well as Jennifer Hallson  
24          with DEMA Land Services.

25                   And I'll let Mr. Fitch indicate who's in our

1 Calgary office.

2 MR. FITCH: Thank you, Mr. Chair. So it is  
3 Gavin Fitch and Michael Barbero from McLennan Ross, and  
4 joining us -- you'll see there's four of us in our  
5 boardroom here in Calgary -- and joining us are  
6 Wayne Speller of Golder Associates and Eric Monteith of  
7 Stantec. Thank you.

8 THE CHAIR: Okay. Thank you.

9 And with The City of Calgary, Ms. Senek?

10 MS. SENEK: Good afternoon, Mr. Chair. It's  
11 Melissa Senek from The City of Calgary. With me today  
12 virtually is my colleague Sara Munkittrick, and we also  
13 have, virtually again, Frank Frigo, leader of Watershed  
14 Analysis at The City of Calgary, and Justin Lo from  
15 Water Resources.

13:42

16 Frank is here to speak to any questions, if  
17 needed, and Sara and Justin will not be presenting;  
18 they're just here to observe today.

19 THE CHAIR: Okay. Thank you.

20 And Calgary River Community Action Group and  
21 Flood Free Calgary.

13:42

22 MR. BRUNI: Good afternoon, Mr. Chair.  
23 Gino Bruni here from Torys LLP. I'm the only person  
24 here on behalf of CRCAG and FFC.

25 THE CHAIR: Okay. Thank you. Have I missed

1 anyone? Has anyone not been called?

2 MR. SECORD: I did miss somebody, Mr. Chair, my  
3 apologies. I forgot to also introduce my partner,  
4 Ifeoma Okoye, who is also in the meeting and she's in  
5 Edmonton.

6 So if anything happens to me, she will have to  
7 come to my rescue. In fact, any technology glitches,  
8 if I disappear, she'll have to come in to cover for me;  
9 but other than that, I'll be taking the lead.

10 THE CHAIR: Okay. Thank you, Mr. Secord. 13:43

11 Okay. So I think we can get started, then.  
12 Mr. Rae and Mr. Snow, I'm not sure if you're both  
13 presenting, or who's leading off, but the floor is  
14 yours.

15 MR. RAE: Thank you, Mr. Chairman. It's  
16 Mr. Rae again. Mr. Snow is available for any  
17 questioning, but the main representations we're making  
18 today will come from me.

19 Thank you for hosting this Zoom meeting today,  
20 Mr. Chairman and other Panel members. 13:44

21 I represent the Stoney Nakoda Nations which  
22 consist of the Bearspaw First Nation, the Chiniki First  
23 Nation, and the Wesley First Nation. The Stoney Nakoda  
24 Nations are not part of the Blackfoot Confederacy.  
25 They are individual Nakoda Nations.

1 I also represent the Stoney Nakoda Nations  
2 wholly-owned company, Woste Igit Nabi Limited, which is  
3 a landowner in the vicinity of the proposed project,  
4 and we would submit at the outset that Woste Igit Nabi  
5 in itself is a qualified local intervener. That  
6 company owns a piece of the lands located approximately  
7 10 kilometres west of the proposed Springbank dry  
8 reservoir, and we have exhibited a map showing the  
9 location of the Woste Igit Nabi lands.

10 Mr. Chairman, I'd like to begin by quoting from  
11 the Board's fact sheet entitled, "Intervener  
12 Considerations." And I quote, in that fact sheet, it's  
13 stated: (as read)

14 "If you see an opportunity to resolve  
15 certain issues more efficiently outside  
16 of the formal hearing process, pursue  
17 it, even if it means asking for a delay  
18 or adjournment."

19 And it's the position of the Stoney Nakoda that, in  
20 addition to the challenges presented by the COVID  
21 pandemic, which we outlined in our letter requesting the  
22 adjournment, it's our position that certain other issues  
23 need to be addressed and, hopefully, some of them  
24 resolved, and perhaps even resolved outside the hearing  
25 process.

13:45

13:45

1           So that is the cumulative basis for the  
2           Stoney Nakoda request for an adjournment of the hearing  
3           which is presently scheduled to begin on March 22nd of  
4           this year, and we have asked for an adjournment of at  
5           least three months.

6           Now, sir, as everybody is aware, the purpose of the  
7           Springbank dam project is to facilitate flood control  
8           downstream on the Elbow River and, in particular, to  
9           address the impacts of a serious flood on the  
10          City of Calgary. Flood control became an issue  
11          following the disastrous floods of both the Elbow River  
12          and the Bow River in June 2013.

13:46

13          The proposed Springbank dry dam, if built, will  
14          deal with flooding of the Elbow River, at least that's  
15          the designed intent, but it will only deal with flooding  
16          of the Elbow River. The Springbank dam will have little  
17          effect on the City of Calgary should there be a  
18          concurrent flooding of the Bow River at the same time  
19          that the Elbow River floods.

20          And because the Elbow and Bow watersheds connect at  
21          the City of Calgary, the Stoney Nakoda requested some  
22          time ago of both Alberta Transportation, the proponent,  
23          and the Government of Canada, as long ago as 2016, we  
24          requested that the Springbank dam be reviewed in  
25          conjunction with an examination of similar proposed

13:47

1 flood control measures for the Bow River.

2 Now, the Bow River, obviously, is a much larger  
3 river than the Elbow River, and the impacts of a flood  
4 on the Bow River are of a magnitude higher than that on  
5 the Elbow River.

6 And I'd reiterate that the Springbank dam by itself  
7 will be of little benefit to the City of Calgary if at  
8 the same time the Bow River floods, and this is  
9 precisely what happened in 2013, both rivers seriously  
10 flooded.

13:48

11 I can advise you, Mr. Chairman, and other members  
12 of the Panel, that the Stoney Nakoda do not intend to  
13 argue an alternative to the Springbank dam. I want to  
14 make that clear.

15 Rather, the Stoney Nakoda intend to argue in front  
16 of this Board what will need to be done in addition to  
17 the proposed Springbank dam that would enable the  
18 Springbank dam to actually achieve its desired effect.  
19 And, by that, we mean that the Springbank dam by itself  
20 is only a half measure.

13:48

21 In order for this Board to fulfill its mandate and  
22 conduct a complete review of, and, again, I quote:

23 (as read)

24 "The social, economic, and environmental  
25 effects associated with the review of

1 the project."

2 This Board cannot consider the purposes of the proposed  
3 Springbank dry dam in isolation from those flood control  
4 measures for the Bow River that will also be required in  
5 order that the Springbank dam will achieve its intended  
6 purpose.

7 For these and other reasons, the Stoney Nakoda in  
8 2016, as I mentioned earlier, requested funding to  
9 conduct hydrogeological studies for both the Springbank  
10 dam and the proposed in-stream dam or dams on the  
11 Bow River. And, presently, we're advised that there are  
12 three proposed dams for the Bow River that are being  
13 investigated.

13:49

14 We have exhibited the request letters from 2016 in  
15 this regard, I don't propose to take you to them, but in  
16 the exhibited copies, we have highlighted the requests  
17 we made for funding for hydrogeological studies.

18 These studies and any decisions resulting from them  
19 are necessary for the protection of the Stoney Nakoda  
20 interests and rights, and those rights include: The  
21 Stoney Nakoda Reserves, specifically Reserves No. 142,  
22 143, and 144, which sit astride the Bow River upstream  
23 of the City of Calgary; those Stoney rights include the  
24 Stoney rights to the waters in and flowing through the  
25 Bow River, which we believe are constitutionally

13:50



1           protected; the rights of the Stoney's include, as I said  
2           off the bat, the fee simple lands owned by their  
3           company, Woste Igit Nabi; and the Stoney Nakoda rights,  
4           last of all, but not least of all, include the  
5           Stoney Nakoda traditional lands which are currently  
6           being asserted -- the rights there are being asserted in  
7           the courts of Alberta.

8           All these lands lie upstream of the City of  
9           Calgary. No other First Nations, nor any other  
10          community for that matter, are directly affected and  
11          impacted in a similar way by the proposed flood control  
12          measures.

13:51

13          Following the submission of the funding request in  
14          2016, the Stoney Nakoda did not receive any funding from  
15          either the federal or provincial governments to conduct  
16          those referenced hydrogeological studies. None of the  
17          funding that Alberta Transportation has said was made  
18          available in the exhibits before you, none of that  
19          funding was eligible to conduct or to be used for  
20          hydrogeological or hydrology studies. So the  
21          Stoney Nakoda have thus been forced to use their own  
22          community resources to determine the impacts of future  
23          floods similar to those that occurred in 2013.

13:51

24          While the federal, provincial and municipal  
25          governments have expended millions of dollars on

1 examining the impact of future floods on the City of  
2 Calgary, we would submit that very little, if anything,  
3 has been expended on examining the impact of future  
4 floods and related mitigation measures on the  
5 Stoney Nakoda lands. There's been very little spent on  
6 the impacts on the reserve lands itself, on the water  
7 rights on the fee simple lands, let alone on the  
8 Stoney Nakoda traditional lands.

9 Since there's been no financial assistance in  
10 commissioning these hydrology and hydrogeological  
11 studies, for the Stoney Nakoda to commission and conduct  
12 these studies, and to make the results known to their  
13 members, will take time.

13:52

14 In the finalized hearing topic list you've  
15 issued -- that the Board has issued, topic No. 4 is  
16 "Water" and explicitly lists "Hydrology" and  
17 "Hydrogeology." So we would submit these issues are  
18 very much in front of the Board. The Board has  
19 confirmed it needs to hear submissions on these issues.  
20 The Stoney Nakoda wish to do so, but they need time to  
21 prepare meaningful submissions in regard to these  
22 issues.

13:53

23 And, as an aside, we have also exhibited a  
24 newspaper editorial in regard to similar issues that  
25 have arisen in regard to flood control structures that

1 were implemented in the Exshaw area further upstream on  
2 the Bow River, and those also were implemented as a  
3 result of the 2013 floods. Again, I won't take you to  
4 that article, but needless to say, the hydrogeological  
5 studies there are still an open question.

6 I would add further, there's been no consultation  
7 by any Alberta representatives with Stoney Nakoda  
8 representatives on the necessity for flood control  
9 structures. And by that I mean, why are these necessary  
10 in the first place? There has been no consultation with 13:54  
11 the Stoney Nakoda in that regard.

12 In other words, there's been no consultation with  
13 the Stoney Nakoda on the basis that these structures are  
14 designed to prevent widespread damage from a future  
15 2013-like flooding of the Elbow and Bow watersheds.

16 In other words, there's been no consultation with  
17 the Stoney Nakoda on the usefulness, in this case, of  
18 the Springbank dam as a standalone structure. If there  
19 are no structures on the Bow River, what are the impacts  
20 going to be of the Springbank dry dam by itself? 13:55

21 There's been no discussions, negotiations, or  
22 consultation with the Stoney Nakoda in that regard. And  
23 I would reiterate that that's an issue that is unique to  
24 the Stoney Nakoda.

25 In its consultation efforts, Alberta Transportation

1 has approached the Stoney Nakoda on the basis that the  
2 need for these flood control structures is a given. The  
3 Stoney Nakoda have been approached on the basis that  
4 there is an assumption that these flood control measures  
5 are necessary. We would submit that that assumption is  
6 also an issue that needs to be examined, that should be  
7 examined, that is part of the terms of reference of this  
8 Board.

9 Quite frankly, the underlying and unstated premise  
10 is that the concerns of the City of Calgary trump those 13:55  
11 of upstream users and, in particular, trump the  
12 concerns, and I dare say, the rights of the  
13 Stoney Nakoda. I'm specifically suggesting that the  
14 assumption has been that the City of Calgary, in order  
15 to protect it, requires inflow flood control structures  
16 on the Bow River, and two of out of the three that are  
17 being investigated involve flooding of Stoney Nakoda  
18 Reserves.

19 We would submit or we intend to argue before this  
20 Board that such a conclusion can only be arrived at 13:56  
21 after, not before, the regulatory process has run its  
22 course.

23 And we suggest that this underlying premise should  
24 only be examined by this Board through due process and  
25 the rule of law, and I don't want to be trite about it,

1 but that rule of law includes all Stoney Nakoda rights,  
2 both procedural and substantive, and including their  
3 constitutional rights. It goes without saying that this  
4 Board's consideration of these issues is a fundamental  
5 part of this due process.

6 And it also goes without saying that a party as  
7 tremendously impacted as are the Stoney Nakoda, that  
8 party needs to be given time and the ability to address,  
9 and perhaps even challenge, the underlying premise that  
10 the public interest necessitates that -- as I said, the 13:57  
11 assumption is is that those concerns of the City of  
12 Calgary take priority over Stoney Nakoda rights. That  
13 has to be examined by this Board; it can't simply be  
14 assumed.

15 In the 1970s, the Province of Alberta constructed  
16 the Bighorn Dam, again, in Stoney Nakoda traditional  
17 territory. That dam created the Lake Abraham Reservoir.  
18 This was done without the consent of the Stoney Nakoda  
19 and resulted in great trauma to the Stoney Nakoda people  
20 living in the Bighorn area. The Bighorn Reserve is 13:57  
21 located immediately adjacent to the Bighorn Dam.  
22 Residual issues from that taking continue to this day.  
23 The Stoney Nakoda do not wish a repeat of that episode.

24 Given the number of these important issues that  
25 remain unaddressed, it's the Stoney Nakoda position that

1 the investigatory and consultation processes are not yet  
2 sufficiently advanced to enable a public hearing to  
3 commence on March 22nd.

4 This Board's Aboriginal Consultation Fact Sheet  
5 states, and, again, I quote: (as read)

6 The NRCB must satisfy itself that the  
7 Government of Alberta's consultation  
8 process is sufficiently advanced to  
9 allow the NRCB review process to proceed  
10 to a public hearing.

13:58

11 We would submit that the consultation process is not  
12 sufficiently advanced.

13 The past year, I'm sure everybody will agree, has  
14 been a lost year due to the COVID pandemic. The  
15 carrying on of our daily lives in the usual manner  
16 simply has not been possible. Nowhere is this more  
17 evident than on the Stoney Reserves west of Calgary. At  
18 the time of the December pre-hearing conference, the  
19 pandemic on the Stoney Reserves was spiking, and in  
20 addition to that, the Chiniki First Nation was in the  
21 midst of an already COVID-restrained election.

13:59

22 Meaningful participation in the pre-hearing conference  
23 thus was very difficult.

24 We have attached as an exhibit a graph showing the  
25 actives cases of COVID on the main Stoney reserves at

1 Morley to support this assertion that, unfortunately,  
2 the COVID pandemic has had a greater impact on the  
3 Stoney Nakoda people than just about anybody else in the  
4 province.

5 We've also attached as an exhibit the Notice of  
6 Local Emergency that was issued on January 11th.

7 I can also advise the Panel that Chief Young of the  
8 Chiniki First Nation has been diagnosed with the COVID  
9 virus in January and is currently recovering.

10 Stoney Nakoda elders are presently scheduled to  
11 receive the first dosages of the Moderna vaccine on  
12 February 8th. There is a 28-day break between the first  
13 and second doses. The maximum effectiveness kicks in  
14 14 days after the administration of the second dose.

15 Given this timeline, it will not be until April 5th  
16 at the earliest that all the elders on the Stoney  
17 reserves will achieve 94 percent effectiveness against  
18 the virus. Those are statistics from Alberta Health  
19 Services. Given the incubation periods of the COVID  
20 variants, this means that it will be May at the very  
21 earliest before the Stoney Nakoda will be able to  
22 communicate with their members in an appropriate  
23 fashion.

24 The Stoney Nakoda are communal people. Most  
25 Stoney Nakoda members, particularly the elders, prefer

14:00

14:00

1 to discuss matters in an open forum, and in those open  
2 forums, they're largely conducted in the Stoney Nakoda  
3 language. This to date has not been possible. It was  
4 not possible any time in 2020, and it will be difficult  
5 to do so in 2021.

6 The Stoney Nakoda need time to get through the  
7 pandemic and time for them to deal with what will be a  
8 changed world, and they need time to deal with the  
9 proposals that are in front of this Board in terms of  
10 the Springbank dry dam that will radically affect the  
11 landscape. 14:01

12 Accordingly, the Stoney Nakoda have also requested  
13 a further pause in referrals from the Alberta  
14 Consultation Office. Stoney Nakoda staff have not been  
15 able to access their documentary and traditional  
16 knowledge records.

17 Now, I point out, sir, that the existing dams on  
18 the Bow River are now over a century old and there is  
19 voluminous history, there is voluminous records in  
20 regards to the planning and operation of those dams over 14:02  
21 the decades. The Stoney Nakoda have experienced  
22 flooding of the Elbow and Bow rivers since long before  
23 the City of Calgary existed. The Stoney Nakoda are also  
24 known as the Iyarhe Nakoda, which means the "Mountain  
25 Nakoda." They are mountain people, they are foothills



1 people. They know how rain and snow in the mountains  
2 and foothills can seriously impact those living in the  
3 river valleys downstream. In order to assess these  
4 projects, they need time to revisit their history in  
5 this regard. The Board's Aboriginal Consultation Fact  
6 Sheet also provides that, procedurally, and I'm quoting:  
7 (as read)

8 "Procedurally, if infringement of  
9 constitutional rights might occur,  
10 Aboriginal peoples must have the  
11 opportunity to have their views heard  
12 and considered in the NRCB review."

13 For these reasons, sir, the Stoney Nakoda reiterate  
14 their request for a postponement of the hearing for at  
15 least three months.

16 Those are my submissions, sir. I'd be pleased to  
17 address any questions.

18 THE CHAIR: Thank you, Mr. Rae.

19 Mr. Kennedy and Ms. Vance, do you have any  
20 questions for Mr. Rae at this time?

21 MR. KENNEDY: I have two questions, Mr. Rae.  
22 And, one, your submission references the most recent  
23 emergency order as the "second" emergency order. Can  
24 you provide the dates as to when the first emergency  
25 order was declared and then removed?

14:03

14:03

1 MR. RAE: I cannot, sir, but Mr. Snow who is  
2 part of the hearing today, perhaps he could answer that  
3 question.

4 MR. SNOW: Yes. I believe we had a state of  
5 emergency in 2020. I'm unsure of the exact date, but  
6 we can connect with our group and look at our records  
7 and ensure that we have the proper date.

8 MR. RAE: If it's appropriate, we can  
9 undertake to get you the dates for that.

10 MR. KENNEDY: Thank you. And when might you be  
11 able to do that? 14:04

12 MR. RAE: We could provide that to the Board  
13 by tomorrow.

14 **UNDERTAKING - TO PROVIDE THE DATES AS**  
15 **TO WHEN THE FIRST EMERGENCY ORDER WAS**  
16 **DECLARED AND THEN REMOVED (SEE PAGE 72)**

17 MR. KENNEDY: Thank you. And then the other  
18 question is just to elaborate on the pre-hearing  
19 conference.

20 So, in advance of the pre-hearing conference, the  
21 Board sent out a letter, in advance of the notice of  
22 pre-hearing conference, talking about prospective dates  
23 for the hearing, as well as a pre-hearing conference  
24 and the matters that would be considered then; and the  
25 Stoney Nakoda had registered as observers to the 14:04

1 pre-hearing conference, but took no position on the  
2 matters with respect -- in fact, made no  
3 representations -- but took no position with respect to  
4 the timing of the hearing at that stage.

5 And so the question to you, Mr. Rae, is, if not  
6 then -- if now, why not then in terms of requesting  
7 making submissions as to the timing of the hearing?

8 MR. RAE: Well, sir, the answer simply is  
9 that the Stoney Nakoda people, and particularly those  
10 residents on the Morley Reserve west of the City of  
11 Calgary, were in the throes of the pandemic.

14:05

12 You can see from the statistics that we provided  
13 you, that we've exhibited, the incubation period of the  
14 COVID virus was just starting to make itself known, and  
15 the Stoney Nakoda people in December, with all due  
16 respect, had other priorities other than attempting to  
17 put forward a position that was set out in the terms of  
18 reference for the pre-hearing conference.

19 MR. KENNEDY: And perhaps one final question,  
20 is, in your remarks, you talked about appearing at a  
21 hearing in some kind of normalcy. I think we're  
22 anticipating that any hearing we do conduct, and at  
23 whatever stage we conduct in calendar year 2021 will be  
24 a virtual hearing. How does that affect your remarks  
25 and participating in the hearing whenever it is

14:06

1 conducted?

2 MR. RAE: It will make the Stoney Nakoda  
3 participation, as well as those of other interveners,  
4 much more difficult.

5 The Stoney Nakoda people appreciate that this is  
6 the world we're in, the pandemic is nobody's fault, we  
7 have to deal with it, and we will attempt to do so, but  
8 it clearly will make it more difficult; and for a  
9 project of the monumental impact of the Springbank dam,  
10 as well as the Bow River proposed dams, they need more  
11 time.

14:07

12 MR. KENNEDY: Thank you. Those are all the  
13 questions I have, Mr. Chair.

14 Thank you, Mr. Rae.

15 THE CHAIR: Ms. Vance?

16 MS. VANCE: Thanks, Mr. Chair.

17 In your submissions of January 20th, you talk  
18 about key personnel not being available, and I suppose  
19 I'm looking for a connection between that and what you  
20 anticipate your or Stoney Nakoda's participation in the  
21 hearing will look like at whatever time it happens.

14:08

22 For instance, counsel, witnesses, experts. I'm  
23 just wondering what you suspect your involvement might  
24 look like at the hearing.

25 MR. RAE: Perhaps I would ask Mr. Snow to

1           respond to that. Mr. Snow is the manager of  
2           consultation for all three Stoney Nakoda Nations, so he  
3           might be in a better position to provide an answer to  
4           that question.

5       MR. SNOW:                            Could you repeat the question?

6       MS. VANCE:                         Yes, I apologize. It was a bit  
7           winding.

8           Basically, the question I'm asking is what you  
9           anticipate your involvement at the hearing will look  
10          like in terms of who would be involved from your end.

14:08

11       MR. SNOW:                         I think that we would expect, or  
12          it's my expectation that we would have involvements  
13          along the similar types of other hearings that  
14          Stoney Nakoda has taken part in, something more along  
15          the lines of the process involved for a CER hearing,  
16          for example.

17          At our hearings, we have involved elders from  
18          communities, we have involved the Stoney Consultation  
19          Office, as well as our legal representation, and we've  
20          also provided for comments from our leadership where  
21          necessary.

14:09

22          So that, having elders, people from the community  
23          leadership, as well as the Stoney Consultation Office,  
24          and our legal representation, as we would for a similar  
25          type of industrial development, for example, pipeline

1 projects, where the hearing process is established.

2 MS. VANCE: Thank you. That helps me a  
3 little.

4 And on a bit of a different note, the letter asks  
5 for, I think, at least three months. So I suppose,  
6 Mr. Rae, you answered the question I had, which is what  
7 is going to change after three months, you suggested by  
8 May you might be able to actually -- you didn't use the  
9 word "assemble," but speak to each other in person.

10 So I assume that that is the answer to my question  
11 of what will have changed in three months? Is that  
12 fair to say? 14:10

13 MR. RAE: Well, Ms. Vance, I could add to  
14 the answer you've given in the rhetorical -- the answer  
15 given to your rhetorical question, of course, when we  
16 wrote the letter on January 20th, the COVID situation  
17 was a moving target, and we didn't know then what we  
18 know now.

19 And you're quite right, that was our best guess on  
20 January 20th as to what would be the minimum period of  
21 time we required in order to be ready for a hearing,  
22 and that was the basis for the request of the  
23 January 20th letter for a minimum of three months. 14:11

24 MS. VANCE: So, to clarify, is that still your  
25 request, then, three months? Or is it different?

1 MR. RAE: That is still our request.

2 MS. VANCE: Thank you. Those are my  
3 questions.

4 THE CHAIR: Thank you, Ms. Vance.

5 Panel members, are there any questions from the  
6 Panel?

7 MR. CEROICI: I don't have any questions at this  
8 time, thanks.

9 MR. HEANEY: I don't have any questions,  
10 thanks.

14:11

11 MS. ROBERTS: And I don't have any questions  
12 either, thank you.

13 THE CHAIR: We may have something on the  
14 wrap-up, Mr. Rae, but, for now, I think we're good to  
15 go, so thank you very much. And, Mr. Snow, thank you.  
16 Mr. Secord.

17 MR. SECORD: Thank you, Mr. Chair.

18 Ms. Vespa, can you hear me?

19 Okay. As you know, I'm counsel for the SCLG. The  
20 SCLG has a great deal of sympathy for the Stoney Nakoda  
21 First Nations and, in particular, the impact that  
22 COVID-19 has had on that community, and the SCLG is  
23 happy to know that, apparently, the vaccine will be  
24 rolled out soon for the members and hopefully that will  
25 create and give them immunity and enable them to

14:12

1 participate in this hearing.

2 The SCLG support the Stoney Nakoda Nation's  
3 request for a three-month pause or adjournment, and if  
4 I could ask you to turn up my letter, which has been  
5 marked Exhibit 183, and this is a letter that I sent to  
6 Ms. Friend on February the 2nd.

7 And in the letter, I note that the SCLG supports  
8 the Stoney Nakoda Nation's application for an  
9 adjournment in the public interest hearing, and I  
10 referred the Board to a new document that was not  
11 available at the pre-hearing meeting on December 3rd,  
12 and that was Appendix G-3 in Exhibit 159 at pdf  
13 page 382.

14:13

14 And I notice Ms. Friend has circulated the entire  
15 Appendix G-3, and I have put -- for ease of reference,  
16 I have cut and pasted a portion of the schedule in my  
17 letter and blown it up so that it's fairly easy to see;  
18 but I would like to draw your attention to the  
19 information, as I said, that was not available to us at  
20 the pre-hearing meeting.

14:14

21 So this document has a heading "Springbank  
22 Off-Stream Storage Project" and you'll see the start  
23 date is 31 August, '21, and the finish date was the  
24 26th of June, 2025. So, basically, a four-year  
25 project. And where we are at right now is the



1 pre-construction project.

2 So you'll note, under the heading "A1000," there  
3 is a line item "Regulatory Approval" and it indicates  
4 that regulatory approval would be expected by  
5 December 1, 2021.

6 The next line is A1010 "Land Acquisition." It is  
7 not expected that -- well, it says land acquisition  
8 would start on the 13th of June, 2022, it doesn't have  
9 a finish date.

10 It's addressing the tender period. The next line  
11 is 1020. It runs from the 31st of August, 2021, to the  
12 24th of April, 2022. So even before the NRCB would be  
13 issuing a decision, the tender process would be  
14 initiated.

14:15

15 Interesting enough, the next line item is that the  
16 project award would not be completed until the 25th of  
17 April, 2022, and mobilization apparently would not  
18 start until the 25th of May, 2022.

19 So, as I stated in my letter, this letter was  
20 filed -- this exhibit was filed on December 18, 2020,  
21 after the Board's pre-hearing conference on  
22 December the 3rd. The pre-construction schedule is  
23 premised upon a regulatory approval by  
24 December 1, 2021.

14:16

25 So the SCLG notes that the Board can accommodate

1 the three-month adjournment being requested by the  
2 Stoney Nakoda Nations and schedule the hearing to start  
3 on June 22, 2021, rather than March 22, 2021, and still  
4 meet the regulatory approval date of Stantec's Appendix  
5 G-3 schedule. And by "regulatory approval date," I  
6 read that as being the date when the NRCB decision  
7 would be issued.

8 And I would expect that typically the Board would  
9 release a decision within 90 days of the close of the  
10 hearing, but even with a June 22 start date, that would  
11 give the Board all of July, all of August, all of  
12 September, all of October, all of November. So,  
13 basically, assuming the hearing takes -- let's say the  
14 hearing took a month, there would certainly be four  
15 months for the Board to be able to issue a decision.

16 I also note, as I did at the pre-hearing meeting,  
17 that I do have that trial from April 26th to May 21, so  
18 if there was some concern on the Board about a June 22  
19 start date, there might be some ability to move it up  
20 in June to give the Board more time.

21 But I'm not even sure that a December 1 regulatory  
22 approval date would be necessarily critical if you take  
23 a look at the schedule, because the tender process  
24 would continue. So it seems to me, even a regulatory  
25 approval in January, I don't see how that would really

14:17

14:18

1           interfere with these pre-construction activities in  
2           terms of the tender -- basically, the tender awards or  
3           the project award date, and mobilization. It seems to  
4           me that even that December 1 date doesn't appear to be  
5           particularly critical.

6           Then, as a further note, the final Preliminary  
7           Design Report was, as I say, only provided by AT to the  
8           parties on December 18th, and when we looked at it, it  
9           seemed that these Appendices B through F, it said they  
10          were being provided under separate cover.

14:19

11          And then Mr. Kruhlak's accompanying letter  
12          actually was not marked as an exhibit, I'm not sure  
13          why, but, of course, in his letter he indicated that,  
14          you know, if you wanted these appendices, you know, you  
15          could, I guess, ask for them.

16          So we asked for them over a week ago, and it still  
17          took a week for Stantec to get these -- over a week to  
18          get these appendices to Ms. Friend and get them posted  
19          up. I mean, if they were readily available, why did it  
20          take a week for them to get posted to the website?

14:20

21          In any event, these documents are voluminous, the  
22          geotechnical has four volumes, and so an adjournment of  
23          the hearing to June 2021 would also provide for further  
24          time to review these new appendices.

25          And then, as a further note, it came to my

1 attention after the request for an adjournment by  
2 Mr. Rae's clients, that there are further problems with  
3 the March hearing date for a number of my ranching  
4 clients, and I mentioned that in an email to Ms. Friend  
5 and indicated that I would be having Mary Robinson  
6 speak to this issue.

7 And, Ms. Robinson, you may want to unmute your mic  
8 now, but I would like to introduce her.

9 For ease of reference, and I don't know if you  
10 have access to the pre-hearing exhibits, but in 14:21  
11 pre-hearing Exhibit 14, you'll notice that we provided  
12 a map of some of the members of the SCLG who live in  
13 close proximity or whose lands are actually going to be  
14 obliterated by this project, and Mrs. Robinson is one  
15 of those unfortunate individuals, and she owns the  
16 SW-3-24-4, west of the 5th meridian, and the NE-3-24-4,  
17 west of the 5th meridian. Her land is where the  
18 floodplain berm will be located. And so I've had some  
19 communications with her about what a March 22 hearing  
20 date would mean in relation to her calving operation. 14:22

21 And, Mrs. Robinson, would you please address the  
22 Chair and his Board members --

23 MS. ROBINSON Thank you very much, Mr. Chairman  
24 and the rest of the Panel members, and Mr. Secord as  
25 well.

1           Just to give you a little background, I've been  
2           incredibly involved with this entire process since  
3           June of 2013 when we did hear on the television that  
4           all of our lands were going to be taken from us and  
5           that the government had been working on that for about  
6           a year. So I'm not going to comment on that presently,  
7           I think that's a future topic.

8           But I've been very involved with this process all  
9           the time throughout every bit of the dealings of all  
10          sorts of panels and open houses. And a lot of time has  
11          been spent, a huge amount of time has been spent, in  
12          the opposition to SR1 as the landowners just feel it is  
13          not the best project for all individuals involved here.

14          So I guess the fact also is that the landowners  
15          are the most impacted of anyone when it comes to these  
16          projects. We're going to lose our homes, we're going  
17          to lose our businesses, we're going to lose our  
18          livelihoods, and we're going to lose our heritage. I  
19          know the Natives have great heritage here, but the  
20          ranchers have been here since the 1880s working on  
21          these lands, and that's exceedingly important to us,  
22          but our homes and businesses and our livelihoods being  
23          eradicated and taken from us unwillingly is exceedingly  
24          disrespectful and has not been taken anywhere near into  
25          consideration. People just do not have the insight

14:22

14:23

1 into the devastation that that does to you and your  
2 families.

3 As far as the hearing goes, this February, March,  
4 April, May time is just the worst time for the ranching  
5 community because we're calving at this time. We are  
6 up 24 hours a day, seven days a week, and we're  
7 checking cattle every two -- one to two hours.

8 So I guess just our energies cannot be put into  
9 this project right now at this time as much as we would  
10 like it to be, and we want to be present and very  
11 visual as we are the people that are the most affected,  
12 and so we very much of the landowners support that  
13 the -- and support the Stoney Nakoda -- that we  
14 postpone this hearing until the June time frame.

15 Thank you.

16 MR. SECORD: And, Mrs. Robinson, I understand  
17 you have 100 head of cattle, so you would be expecting,  
18 what, 100 cow/calf pairs by the end of May?

19 MS. ROBINSON: That's correct, but there is other  
20 ranchers. There are some that have 75, there's some  
21 that have 600.

22 So, I mean, this is our prime time of year, so  
23 this is definitely not the best time for ranchers to be  
24 involved in such an in-depth process that is affecting  
25 their lives 100 percent, their homes, their families,

14:24

14:25

1 their businesses. We are the most affected of anybody  
2 concerned here.

3 So I think that we most certainly deserve to have  
4 that recognized at this time.

5 MR. SECORD: And you mentioned other ranchers.  
6 So, for instance, Marshall Copithorne, who is also  
7 shown on the map -- on the pre-hearing Exhibit 14, I  
8 understand he has something in the order of 600 head of  
9 cattle; is that correct?

10 MS. ROBINSON: Yeah, he does. There's feedlots. 14:26  
11 He's got a lot of cow/calf pairs. I think he has about  
12 600 cow/calf pairs. I know Al Copithorne has got about  
13 200. I mean, there's a lot of -- Feiss has got 75 --  
14 there's a lot of big operations around, and all these  
15 peoples, it is them that are being the most directly  
16 affected, so I think that should be given some sort of  
17 weight and priority when it comes to this decision.

18 MR. SECORD: Thank you, Mrs. Robinson.

19 Mr. Chair, those are all of our submissions, and  
20 we would be happy to respond to any questions if there 14:26  
21 are any.

22 THE CHAIR: Okay. Thank you, Mr. Secord,  
23 Ms. Robinson.

24 Ms. Vance? Mr. Kennedy?

25 MS. VANCE: I have no questions. Thank you.

1 MR. KENNEDY: I think I have no questions  
2 either. Thank you.

3 THE CHAIR: Panel members?

4 MS. ROBERTS: I have no questions.

5 MR. HEANEY: Just a question for Richard Secord  
6 or Mrs. Robinson. I mean, why weren't we hearing about  
7 this during the pre-hearing conference when we  
8 discussed dates or immediately after the pre-hearing  
9 report was issued with the dates? Could you kind of  
10 expand on that a bit?

14:27

11 MR. SECORD: Well, actually, no, I was  
12 advocating for a hearing in June of 2021, and I was not  
13 aware of the calving schedule when we made our  
14 submissions, so that was the principal reason.

15 And then following Mr. Rae's clients' request for  
16 an adjournment, I was then alerted that, in addition  
17 to -- in addition to, you know, the issue with the new  
18 evidence that we didn't have at the pre-hearing meeting  
19 in terms of the schedule, that there was this issue  
20 with Mrs. Robinson and her calving operation.

14:28

21 I was unaware, for instance, that Mrs. Robinson  
22 would -- and maybe this hasn't been clear, but,  
23 essentially, you know, is on her own. She is the one  
24 who gets up in the middle of the night to check on her  
25 cattle.



1           And, I mean, I probably should have known that, I  
2 was raised on a farm west of Edmonton, we raised  
3 purebred Shorthorns, and we had -- we didn't have that  
4 many cattle, but we were certainly, during the calving  
5 season, we were up checking cattle.

6           But I was just unaware that Mrs. Robinson's  
7 personal circumstances and the amount of time and  
8 energy that she has to expend to look after her herd,  
9 and I was unaware that it extended from basically  
10 March to the end of May.

14:29

11           As it happened, the request I made would have  
12 accommodated that, but I was unaware of that particular  
13 detail until Mr. Rae made his application, and so I now  
14 bring it to your attention, in addition to this new  
15 schedule, which I also think -- I didn't know about  
16 this schedule in terms of regulatory approval dates  
17 either.

18           So I suspect had Mr. Rae not brought his  
19 application, we may well have done so; but, anyway, we  
20 are here now.

14:29

21 MR. HEANEY:                   Thank you.

22 MR. CERIOCI:                 Mr. Secord, you made reference to  
23 the Stantec pre-construction time frame, and you're  
24 referencing the regulatory approval, and you were -- I  
25 think you stated that your impression was that that was

1 NRCB approval hearing -- you know, deadline would be by  
2 December 21st.

3 This may be a question for Alberta Transportation,  
4 but I was wondering, regulatory approval for the  
5 project would require other permits from, for example,  
6 Alberta Environment under *The Water Act* and perhaps  
7 under the *Environmental Protection and Enhancement Act*,  
8 and would this regulatory approval deal with those as  
9 well, or is your impression still that it deals only  
10 with the NRCB Act -- or the NRCB approval?

14:30

11 MR. SECORD: I'm sure we're going to hear from  
12 Mr. Kruhlak about what Stantec's regulatory approval  
13 means, and I'm sure it's going to be expanded to mean  
14 more than the NRCB approval. I expect he'll be saying  
15 that it involves approval from Cabinet, and that that's  
16 going to take a great deal of time. So I'm sure we'll  
17 hear from Mr. Kruhlak on that.

18 All I would put to you is, take a look at their  
19 schedule, and it seems to me there is a lot of time  
20 between now and the end of the tender process and the  
21 mobilization.

14:31

22 And so my view is this December 1 date has no real  
23 magic attached to it, and there's a lot more leeway  
24 than even Stantec has set out in that document.

25 MR. CEROICI: Thank you.

1 THE CHAIR: Thank you.

2 And, Mr. Ceroici, I was going to raise that same  
3 point and suggest that perhaps, even though it was  
4 submitted by Mr. Secord, that it would be  
5 Transportation that might put some further light on the  
6 regulatory approval because it is, I think even on its  
7 face, on the one-liner. But I'm sure we'll either have  
8 an opportunity to hear from Transportation or ask  
9 Transportation more specifically about that.

10 So, with that, I don't have anything further. I  
11 want to thank both of you, Mr. Secord and  
12 Mrs. Robinson, for taking the time to submit and also  
13 appear, it's appreciated, and thank you.

14:32

14 MR. SECORD: Thank you.

15 THE CHAIR: You bet.

16 So we have Transportation, Mr. Kruhlak and  
17 Mr. Fitch. I'm not sure if both of you are going to be  
18 presenting, but I'll leave that to you, Mr. Kruhlak, to  
19 get things rolling.

20 MR. KRUHLAK: Thank you, Mr. Chairman. I think  
21 our plan is, I will have some initial comments with  
22 respect to the request of the Stoney Nakoda Nations,  
23 and my friend Mr. Fitch will address some of the  
24 comments raised by Mr. Secord for the landowner group.

14:32

25 As I indicated in the preamble of my letter marked

1 as Exhibit 167 responding to Mr. Rae's correspondence,  
2 Alberta Transportation certainly recognizes the  
3 importance of consulting and communicating with the  
4 Stoney Nakoda Nations.

5 We have submitted, as part of the record before  
6 the NRCB, extensive consultation summaries,  
7 consultation records, I understand they're marked as  
8 Exhibit 153, which review the last several years of  
9 consultation.

10 And as I understand the process, it is those  
11 records are prepared and reviewed both by the Alberta  
12 Consultation Office, as well as the Stoney Nakoda  
13 Nations before it is then prepared for final filing and  
14 submission to the Board to record the history of those  
15 communications.

16 And, as indicated in my letter, there were at  
17 least nine meetings over the last several years between  
18 Alberta Transportation project personnel and its  
19 consultants, and members of the Stoney Nakoda Nations.  
20 There were also facilitation and funding of 11 days of  
21 site visits for elders and other representatives from  
22 the Stoney Nakoda Nations to tour the project site.

23 Essentially, what that record establishes is that  
24 Alberta Transportation provided funding for all  
25 requests of the Stoney Nakoda Nations which were

14:33

14:34

1 supported by a budget, whether that be for the  
2 traditional use study or for the site visits. And I,  
3 in my review of those records, could find no request or  
4 a tendered budget for hydrogeological studies or  
5 hydrology studies that were referenced in those dated  
6 pieces of correspondence.

7 We also noted in our correspondence that the  
8 Stoney Nakoda Nations received eligibility or  
9 entitlement for funding from the federal regulator in  
10 excess of \$112,000 to review the project.

14:35

11 The Stoney Nakoda Nations have had the benefit of  
12 having very experienced legal counsel act for them, as  
13 well as very experienced consultation staff who have  
14 been involved in one way or another over the last  
15 number of years, some of that going back to 2014.

16 And when I matched that to what the NRCB has done  
17 since it initiated this process, we go back to  
18 September 23rd, 2020, when the notice was published by  
19 the Board, which set out the process, procedure, and  
20 timelines.

14:36

21 As I understand it, and you'll get confirmation  
22 from Mr. Rae tomorrow, the local state of emergency  
23 which took place last year in 2020 had wrapped up by  
24 June of 2020, and he can provide the detailed dates,  
25 but it appears that, certainly by the time the NRCB

1 issued its notice last fall, that the state of  
2 emergency from last year had concluded.

3 We then had the notice of pre-hearing on  
4 October 5th, followed by the pre-hearing conference on  
5 December 2nd, 2020. We had numerous parties there,  
6 including other First Nations, and it sounds like the  
7 Stoney Nakoda Nations had full knowledge of that  
8 process as they chose to file an observer -- or record  
9 as an observer for participation purposes.

10 There was no request through any of that process  
11 to participate as an intervener or, for that matter, to  
12 seek any specific funding for certain technical  
13 studies. That is, not until June 20th of this year,  
14 where the request was made for standing, funding,  
15 advance funding, and for this adjournment request.

16 And upon receipt of that, Alberta Transportation  
17 endeavored to promptly respond to the Stoney Nakoda  
18 Nations to provide them with comfort that there would  
19 be no objection from Alberta Transportation's part with  
20 respect to standing, and that the advance funding would  
21 be consented to in a similar fashion to other First  
22 Nations that made funding requests and, essentially,  
23 granted on the basis of what was requested. And,  
24 again, even at that time, there's no request for any  
25 other technical information such as hydrology reports

14:37

14:37

1 or requests for something of that nature.

2 The interests of Alberta Transportation were to --  
3 if the Stoney Nakoda Nations chose to get involved at  
4 this time, that we provide them with every opportunity  
5 to get involved as quickly as possible because there's  
6 still sufficient time to prepare to address their  
7 issues by March 22nd, the start of the hearing.

8 As I submitted, Mr. Chairman, in our remarks at  
9 that pre-hearing last December, this project is clearly  
10 needed, there's no dispute. There's a clear and  
11 present risk present for downstream people and  
12 communities that warrants this type of project.

13 We had actually requested before the Board last  
14 December the hearing take place in February. You heard  
15 a number of concerns expressed from other parties, and  
16 in the interest, as stated in the pre-hearing decision,  
17 in the interest of a fair and efficient process, the  
18 hearing date of March 22nd was announced.

19 This project, as you've heard, has gone back a  
20 long time already with respect to the extent of the  
21 reviews, the enquiries with respect to it. We submit  
22 that it is critical to have it heard.

23 And my friend Mr. Fitch will speak to perhaps the  
24 misconceptions that might be interpreted over that  
25 Stantec schedule, but as -- it's similar to what I

14:38

14:39

1 expressed at the pre-hearing, that there's a cascading  
2 process of approvals that are required after an NRCB  
3 hearing, if successful, follows an order in council  
4 which then would trigger other *Water Act* approvals, as  
5 you've mentioned, and perhaps *Public Lands Act*  
6 approvals -- as I say, Mr. Fitch will address some of  
7 the nature of the following steps which need to be  
8 accomplished before one can start looking at securing  
9 the balance of lands and initiating the project.

10 Now, one of my concerns that I've heard that  
11 Mr. Rae has expressed here is some of the concerns that  
12 the Stoney Nakoda Nations appear to have. I don't  
13 dispute any issues that may be expressed with respect  
14 to the Bow River projects, to which I'm not involved  
15 in, that the Bands may have or other flooding issues,  
16 but the reviewable project before this Board is the  
17 Springbank project.

18 We are not dealing with projects on the Bow River,  
19 to whatever degree those projects are being assessed at  
20 this time, and it clearly would not be relevant for the  
21 Board to start embarking on some process of a larger  
22 scale analysis of flood mitigation projects which, with  
23 respect, are not before you. There is the one project  
24 here we're dealing with, and I have to say we have our  
25 hands full just dealing with that, and that's the

14:40

14:41



1 Springbank project.

2 So if there are these broader nature of concerns,  
3 I don't think an extension of time to try to bring some  
4 review of those or the degree to which there should be  
5 consultation on those is relevant to this particular  
6 review and hearing that we have scheduled.

7 We've certainly tried to come up with ways to  
8 accommodate this request, we certainly appreciate the  
9 challenges that the pandemic places on all individuals  
10 and communities, and with that, we're attempting to  
11 balance dealing with the project that does have some  
12 highly critical aspects of it with respect to timing  
13 and construction.

14:42

14 If there was some nature of accommodation that  
15 could be made to ensure that, within the next several  
16 weeks, the Stoney Nakoda Nations could become more  
17 prepared to participate, we'd be happy to try to  
18 facilitate that and extend whatever cooperation we  
19 could. However, at this stage, based on the  
20 submissions we've heard, we cannot agree or consent in  
21 any way to this three-month extension.

14:42

22 And, as I said, with respect to some of the other  
23 comments of the Springbank Concerned Landowners Group,  
24 I'll maybe turn it over to Mr. Fitch right now to  
25 address those.

1 MR. FITCH: Thank you, Mr. Chair. As my  
2 colleague, Mr. Kruhlak, has indicated, I will be  
3 responding on behalf of Alberta Transportation to the  
4 submissions made by Mr. Secord on behalf of his client,  
5 the SCLG.

6 And you will know that the SCLG filed a letter two  
7 days ago on February 2nd that's been marked as  
8 Exhibit 183, and then -- and, essentially, in that  
9 letter, Mr. Secord advances four arguments that he  
10 elaborated on today, and I will address each of those  
11 arguments. 14:43

12 And the first, and I think most substantive of  
13 those arguments is that, based on the draft Stantec  
14 construction schedule contained in the Preliminary  
15 Design Report, Alberta Transportation does not need  
16 approval from the NRCB until December 1st of this year,  
17 and, therefore, a three-month adjournment will not  
18 impact the project. So that's the first argument.

19 The second is obviously less substantive, and  
20 that's just simply that Mr. Secord is involved in a  
21 Queen's Bench trial from April 26 to May 21 and,  
22 therefore, a hearing in June would be, essentially,  
23 better for him. 14:44

24 The third point they raised in their submissions  
25 is that the Preliminary Design Report only was made

1 publicly available on December 18th, 2020, which was  
2 after the pre-hearing conference. And related to that,  
3 they argue that, in fact, five appendices to the  
4 Preliminary Design Report were only made publicly  
5 available a couple of days ago on February 2nd, 2021.  
6 So that was what was argued in the February 2nd letter.

7 Yesterday, we received an email in which  
8 Mr. Secord advised that he'd also be arguing and have  
9 his client Mrs. Robinson speak to this issue of the  
10 fact that the hearing is currently scheduled to fall  
11 within calving season.

12 So, to begin our response, I wanted to know --  
13 before I deal with each of those issues, I just want to  
14 make sure we're all clear about what's going on here.

15 Mr. Secord's letter states that the SCLG supports  
16 the Stoney Nakoda Nations' adjournment application.  
17 It's significant, in our view, that SCLG has not itself  
18 applied for an adjournment. And the significance is  
19 that none of the arguments that have been put forward  
20 by Mr. Secord have anything to do with the grounds  
21 advanced by the Stoney Nakoda for their adjournment  
22 request, which you have just heard deal with  
23 consultation and the COVID pandemic. In our  
24 submission, the SCLG is simply using the  
25 Stoney Nakoda's adjournment application as an

14:45

14:45

1 opportunity to reargue its position they argued at the  
2 pre-hearing conference which was that the hearing  
3 should not take place until June.

4 In the absence of the SCLG itself applying for an  
5 adjournment application, we submit these are not proper  
6 submissions because they're actually not relevant at  
7 all to the Stoney Nakoda Nations' application. The  
8 fact is the Board heard most of what you just heard  
9 from Mr. Secord earlier today at the pre-hearing  
10 conference and rejected those submissions.

14:46

11 So dealing now with the first argument that my  
12 friend has advanced, namely, there's lots of time  
13 because the draft construction schedule contained in  
14 the Preliminary Design Report doesn't -- well, it says  
15 that regulatory approval is estimated to occur on  
16 December 1st of this year.

17 So, to begin, the hearing is currently scheduled  
18 to begin March 22nd. The Board has suggested that we  
19 all set aside three weeks. So that takes us until  
20 April 9th.

14:47

21 The Board, like the AUC and the AER, typically  
22 likes to give itself 90 days to issue a decision. That  
23 then takes us to July 8th.

24 The Lieutenant Governor in Council will have to  
25 issue an authorization by order under counsel once the

1 Board has issued its report. There's no time limit for  
2 the doing of that. We're going to just suggest that it  
3 would occur within 30 days. So that takes us  
4 until -- that takes us to August 7th. So by  
5 August 7th, on the current schedule, we say there could  
6 be authorization by the Lieutenant Governor in Council  
7 for this project.

8 And the key point -- and this was picked up by two  
9 of the Panel members -- the key point is that my friend  
10 seems to assume that the date of December 1st refers  
11 only to the date of approval by this Board, by the  
12 NRCB, and that is in fact not correct.

14:48

13 Regulatory approval, as it's used in the schedule  
14 in the Preliminary Design Report, refers to all  
15 approvals, because, of course, the schedule is a  
16 construction schedule, and you can't start constructing  
17 a project until you have, not just your NRCB approval,  
18 but also, as someone noted, approvals from AEP and, in  
19 this case, that includes approvals under the *Water Act*  
20 and the *Public Lands Act*. In addition, there are  
21 federal approvals that have to be issued. So it's not  
22 correct to say that the only approval required just are  
23 construction, which is the premise for my friend's  
24 position, is the NRCB approval.

14:49

25 We are working on the assumption that, to get all

1 of our permits from the AEP will take anywhere from two  
2 to four months. And it's important, I think, to note  
3 that AEP, in our experience, will not approve permits  
4 until after the NRCB has issued its report. And, in  
5 part, that's because the AEP will want to review the  
6 Board's report to ensure that any approvals and permits  
7 that AEP issues are consistent with recommendations  
8 that the Board might make. So, as I say, our best  
9 guess as to the length of time it will take to obtain  
10 these approvals is up to four months.

14:50

11 So if you add four months to August 7th when we  
12 are thinking we can get Lieutenant Governor in Council  
13 authorization, that takes us to December, that takes us  
14 to December 6th. So that's more or less the date that  
15 is identified in the construction schedule and the  
16 Preliminary Design Report.

17 And I would say in addition that, you know, when  
18 you look at the schedule, it takes a bit of reading,  
19 and what my friend has done is he has cherry-picked one  
20 date out of five pages of many, many dates and said,  
21 "Ah-ha, regulatory approval, December 1st, we have lots  
22 of time."

14:50

23 But when you look a little more closely at the  
24 schedule, you will notice a couple of things. One  
25 thing you'll notice is there's no float in the

1 schedule. So there's no time that Stantec has just  
2 said, "We're going to use as a buffer in case things go  
3 slower than expected."

4 The other thing is, if you look at some of the  
5 other major tasks that are covered in the schedule, one  
6 of them relates to construction of the diversion  
7 channel, and that starts on pdf page 3 of the document,  
8 and I'm referring to the -- just the appendix that was  
9 circulated by Ms. Friend yesterday.

10 So on the third page, basically, of the schedule,  
11 you will see "Diversion Channel," it's in an orange  
12 row, and the start date is December 1, 2021. What that  
13 means is that, if all goes according to schedule,  
14 Alberta Transportation would like to begin construction  
15 work, the work that they can do having regard to  
16 weather, in December.

14:51

17 So my friend is just not correct when he suggests  
18 that December 1st (a) doesn't mean what he says it  
19 means; and, secondly, he's incorrect when he suggests  
20 it's actually not a very important date anyways. It is  
21 an important date.

14:52

22 And so the position of Alberta Transportation is  
23 that a three-month delay in fact will impact  
24 significantly the schedule that is set out in  
25 Appendix G-3.

1           And so those are my submissions on the schedule.  
2           I would note, when we get to questions, that I do have  
3           Mr. Eric Monteith of Stantec with me in Calgary,  
4           Stantec, of course, created the schedule. So if you  
5           think that you still have questions about what the  
6           schedule means, hopefully we can answer those  
7           questions.

8           So the second point I want to address, and I can  
9           do this quite quickly, Mr. Secord raised the fact that  
10          he's in a Queen's Bench trial from April 26th to  
11          May 21st. 14:53

12          I would simply point out that Mr. Secord made this  
13          very same point in the November 20 pre-hearing  
14          conference submissions filed on behalf of the SCLG and,  
15          of course, he also made that same point in his oral  
16          submissions in the pre-hearing conference on  
17          December 2nd. And he made those submissions in support  
18          of SCLG's position that the hearing should commence  
19          May 31st, i.e., it should take place in June.

20          The Board heard that submission and obviously 14:53  
21          rejected it because the hearing was scheduled for  
22          March, not June; and, in our submission, there is no  
23          reason for the Board to revisit the decision that it  
24          made in December.

25          The next point I wish to address briefly is my



1 friend has referred to new information, and what he  
2 means there is that the Preliminary Design Report was  
3 only provided to the Board and made publicly available  
4 on December 18th, 2020, which was after the pre-hearing  
5 conference.

6 So my first submission on that is that the PDR, or  
7 the Preliminary Design Report, has now been available  
8 for review on the public record for seven weeks. I  
9 mean, that's how long it's been since December 18th.  
10 And even if you account for Christmas and give, say, 14:54  
11 two weeks when we all should have been with our family  
12 and not working, that's still five weeks. So the SCLG  
13 has had the PDR for five weeks. Until this week, when  
14 Stoney Nakoda Nation made its application for an  
15 adjournment, we heard no complaint from the SCLG about  
16 the PDR being filed on December 18th.

17 In our submission, it had plenty of time to make  
18 that complaint if they felt it was unfair to them, and  
19 they didn't do so. And, again, they're just simply  
20 using the Stoney Nakoda Nations' adjournment 14:55  
21 application as an opportunity to now ex post facto make  
22 the complaint. So, in our submission, this is not a  
23 valid ground for an adjournment.

24 And, in addition, Alberta Transportation would  
25 note that the Preliminary Design Report is an update of

1 an earlier report called the "Interim Design Report,"  
2 which has been on the public record since  
3 November 2017. It's not an entirely new document.  
4 It's an iteration of a previously filed document. So,  
5 again, Alberta Transportation submits, not a valid  
6 ground for adjournment.

7 Mr. Secord also referred to the fact that five  
8 appendices to the Preliminary Design Report were only  
9 made publicly available two days ago on February 2nd.  
10 And I think it's important that we be clear about what  
11 Alberta Transportation said when we filed the PDR on  
12 December 18th, and I'm going to quote from  
13 Mr. Kruhlak's letter where he said: (as read)

14 "To facilitate review of the PDR, we  
15 attach a short memo comparing the 2017  
16 Interim Design Report and the current  
17 PDR. In addition, we are filing  
18 Appendices A and G (G being the project  
19 schedule) together with the main body of  
20 the PDR. Should the Board or any of the  
21 interveners wish to review those  
22 appendices not included herein,  
23 Alberta Transportation would be happy to  
24 make them available and, finally, we  
25 note that these appendices provide very

14:56

14:56

1 technical engineering level detail and  
2 are extensive."

3 So, on December 18th, we said we're not going to provide  
4 all of the appendices because a lot of them are just  
5 very technical and won't mean much to anyone, and in our  
6 submission, will have ultimately very little, if any,  
7 bearing on the public interest determination that this  
8 Board has to make.

9 But, in any event, we said on December 18th, if you  
10 want to review the appendices we haven't included, let  
11 us know, and it was not until January 26th, 2021, five  
12 weeks later, that SCLG requested those appendices, and  
13 they were made available on February 2nd.

14:57

14 So, in our submission, again, SCLG is simply using  
15 the Stoney Nakoda Nation adjournment application as an  
16 opportunity to reiterate arguments its made before and  
17 to create new arguments in support of the position that  
18 it's been advancing all along, which is that the hearing  
19 should be in June instead of March.

20 Finally, with regard to the issue of the hearing  
21 being during calving season, Alberta Transportation  
22 submits that the fact that calving season extends until  
23 late March would obviously have been known to both  
24 Mrs. Robinson and all her rancher neighbours who are  
25 part of the SCLG when they filed their submissions on

14:58

1 November 20th for the pre-hearing conference and when  
2 Mr. Secord made his submissions on December 2nd. Yet,  
3 as was noted in the questioning, no reference at that  
4 time, in November or December, was made to there being a  
5 conflict between calving and the hearing in late March.

6 Mr. Secord acknowledged that he was unaware of the  
7 fact that his client, Mrs. Robinson, calves in late  
8 March, and with all due respect to my learned friend,  
9 that's not good enough to just simply say, "Sorry, I was  
10 unaware."

14:59

11 So, again, Alberta Transportation submits that also  
12 is not a valid argument to make now in support of an  
13 adjournment to a date you had always been hoping would  
14 be the date for the hearing in the first place.

15 So, Mr. Chair, Panel members, those are my  
16 submissions on behalf of Alberta Transportation dealing  
17 or responding to the SCLG submissions.

18 I think, unless Mr. Kruhlak has anything to  
19 revisit, we are both available for questioning by the  
20 Panel.

14:59

21 THE CHAIR: Mr. Kruhlak?

22 MR. KRUHLAK: I have nothing further to add,  
23 Mr. Chairman. We welcome any questions you might have.

24 THE CHAIR: Okay. Thank you. Mr. Kennedy?  
25 Ms. Vance?

1 MR. KENNEDY: I have no questions. Thank you,  
2 Mr. Chair.

3 MS. VANCE: Nor do I, thank you.

4 THE CHAIR: And Panel members?

5 MS. ROBERTS: I have no questions.

6 MR. CERIOICI: I have no questions either,  
7 thanks.

8 MR. HEANEY: I --

9 MS. ROBINSON: I do have some comments.

10 Mr. Kruhlak, you had said that Alberta  
11 Transportation agrees that all communities need flood  
12 mitigation, but that's a little redundant when you're  
13 supporting only SR1 as that only protects one  
14 community, not Upper Bragg Creek, Bragg Creek, any of  
15 the rural ranchers, or the large community of  
16 Springbank.

15:00

17 And I think it's a point that this is a water  
18 management issue, this is not an Elbow, this is not a  
19 Bow, this is a total water management issue that has  
20 not been dealt with properly with Alberta, period, in  
21 the past, and I think we need to revisit that and try  
22 and make that a better thing than it's been in the  
23 past.

15:00

24 And if look at your hydrology, Mr. Kruhlak, you'll  
25 realize that --

1 MR. KENNEDY: Mrs. Robinson -- Mrs. Robinson, if  
2 I may.

3 Mr. Chair, this is a little unusual, and sometimes  
4 the Board extends flexibility to parties in terms of  
5 proceedings, but it would be unusual to have questions  
6 going back to a party who's responding to an  
7 application.

8 THE CHAIR: I would agree.

9 And, Ms. Robinson, with all respect, I think, you  
10 know, the hearing is the time for some of the matters  
11 to be brought forward that are of interest to you and  
12 that you're sort of relaying now to Alberta  
13 Transportation. I mean, today was really devoted to  
14 the extension application by Stoney Nakoda.

15:01

15 So, with respect, I think we ought to, you know,  
16 finalize any questions I may have had with Alberta  
17 Transportation, move through the other respondents, and  
18 then I'll ask Stoney Nakoda to respond at the end since  
19 it is their application.

20 MS. ROBINSON: There was a lot of other people  
21 that spent a great deal of time saying such things, and  
22 I was getting to the point that the Stoney Nakoda  
23 application is relevant because the Elbow and the Bow  
24 were both part of the flood problem in Calgary. That  
25 was my -- my only point that I wanted to make at that

15:02

1 time.

2 THE CHAIR: Fair enough.

3 MS. ROBINSON: The other thing about Mr. Fitch,  
4 his -- his saying that Stantec -- there was a lot of  
5 these timelines and things with Stantec, but I think  
6 Stantec -- you're also presuming that Stantec is going  
7 to be awarded this contract and that has not been --  
8 the decision to that has not been made as yet who is  
9 going to be awarded the contract.

10 It's very presumptive that it will be Stantec, but  
11 that's been a very biased decision in the past when it  
12 comes to the conflict of interest, if they are.

15:03

13 So that was just another thing that Mr. Fitch  
14 brought forward.

15 THE CHAIR: Fair enough. You know, whether or  
16 not they're awarded the contract is not at issue today  
17 and, again, it's really the adjournment. So I'd  
18 really -- you know, we appreciate you attending, we  
19 appreciate that you've got some -- you know, you've got  
20 emotion attached to the issue and you'd like to weigh  
21 in, but this really isn't the time.

15:03

22 So I think we really should close off the Panel  
23 comments at this point, and then move on to, I think  
24 it's City of Calgary next.

25 But, Mr. Ceroici, did you have any questions?

1 MR. CEROICI: No, I think we ended up with me  
2 and I have no questions.

3 THE CHAIR: Okay. And my questions were  
4 answered with respect to the timing of regulatory  
5 approvals. So thank you, Transportation, for that.  
6 Anything else, Ms. Vance or Mr. Kennedy?

7 MR. KENNEDY: I having nothing else.

8 And just, maybe this helps Mrs. Robinson, is the  
9 Board's process is not an open forum, it is a review  
10 process that has a schedule and an organized order of  
11 presentation, and the Stoney Nakoda, as the applicant,  
12 they make their presentation, other parties get a  
13 chance to make their presentation, and what we heard  
14 was Alberta Transportation's reply to that.

15:04

15 The Stoney Nakoda as the party requesting relief  
16 will have an opportunity once all other parties have  
17 made their submissions to reply to the issues that have  
18 been raised since they orally addressed their  
19 application at the front end of the hearing; but,  
20 otherwise, we really don't expect to hear from parties,  
21 it is not an open mic process.

15:05

22 THE CHAIR: Thank you, Mr. Kennedy.

23 So thank you --

24 MS. ROBINSON: I was just trying to discuss  
25 timelines that -- I was just sort of discussing the



1 timelines that were there and whether those were really  
2 written in stone or whether there was any sort of  
3 flexibility of that, and we are talking about timelines  
4 here.

5 THE CHAIR: Fair enough. And we have heard  
6 from both you and Mr. Secord with your request, and  
7 we'll be taking those into account, so thank you.

8 Transportation, thank you. I think we're done  
9 with any Panel questions or staff questions.

10 So I will move to Ms. Senek with City of Calgary. 15:06

11 MS. SENEK: Thank you, Mr. Chair, I will be  
12 brief. We don't have -- or I don't have much to say  
13 outside of our written submissions.

14 As noted in the written submissions, our chief  
15 concern is that a three-month extension would put the  
16 hearing right in the middle of Calgary's peak flooding  
17 season which runs from May through to July every year.

18 So our experts on SR1, including Mr. Frigo who is  
19 here with me today, are the City's hydrotechnical  
20 engineering specialists on the watershed analysis team. 15:06  
21 They also serve key roles in the City's flood  
22 forecasting and response operations.

23 While we can't fully predict at this early stage  
24 whether there will be a severe flood event in 2021,  
25 starting in early May, our experts are on full 24/7

1 on-call rotation for training, monitoring, and  
2 forecasting. Should a flood event occur, our experts  
3 will be required on the ground to support flood  
4 response activities.

5 If the hearing is adjourned, the City would make  
6 every effort to participate fully in the proceeding,  
7 but have concerns that its experts' participation will  
8 conflict with their emergency response duties if  
9 they're required.

10 In addition, it's the City's position that SR1 is  
11 a necessary component of flood mitigation for the  
12 City of Calgary and should be considered for approval  
13 as soon as possible.

15:07

14 For those reasons, it's our preference that the  
15 public interest hearing continue as scheduled on  
16 March 22nd.

17 And those are my submissions. If the Board has  
18 any questions, both myself and Mr. Frigo are here to  
19 answer and speak to them.

20 THE CHAIR: Thank you, Ms. Senek.

15:07

21 Counsel, any questions?

22 MS. VANCE: I have none, thank you.

23 THE CHAIR: Mr. Kennedy? I'm not sure if  
24 we've lost you.

25 MR. KENNEDY: I have no questions either. Thank

1           you.

2           THE CHAIR:                   Thank you.

3                   Panel?

4           MR. CEROICI:                   I have no questions.

5           MR. HEANEY:                   I have no questions either at this  
6           time.

7           MS. ROBERTS:                   And I have no questions either.

8           THE CHAIR:                   And I have no questions.

9                   Thank you, Ms. Senek, and others who are taking  
10           the time to appear and submit. Thank you.

11                   Calgary River Community Action Group.

12           MR. BRUNI:                   Thank you, Mr. Chair.

13                   My name is Gino Bruni, and I'm from Torys LLP,  
14           here on behalf of the Calgary River Communities Action  
15           Group and the Flood Free Calgary as well.

16                   Our view is that the adjournment request by the  
17           Stoney Nakoda Nation should be denied, and we agree  
18           with the submissions of my friends, Mr. Kruhlak,  
19           Mr. Fitch, and Ms. Senek.

20                   We think this request should be denied for three  
21           principal reasons: First, we view the Stoney Nakoda  
22           Nations' explanation for not participating in the  
23           pre-hearing conference to be inadequate, especially  
24           given the Board provided ample notice of this  
25           proceeding, and the Stoney Nakoda Nations registered as

15:08

15:08

1 an observer on the pre-hearing conference -- are you  
2 having trouble hearing me?

3 THE CHAIR: Yes, yes, I am. And I think the  
4 court reporter may as well. So I'll put my mute on.  
5 I'm not sure if that was causing an issue, but give  
6 that another try.

7 MR. BRUNI: So I was saying that there's three  
8 reasons why we feel that this adjournment request  
9 should be denied.

10 The first one is we feel the Stoney Nakoda Nations  
11 have not provided an adequate explanation for not  
12 participating in the pre-hearing conference after the  
13 Board provided two -- effectively, two notices, one in  
14 September and one in October of the pre-hearing  
15 conference, and the Nations registered as an observer  
16 for that conference.

15:09

17 And we also feel that the evidence that's been  
18 provided to try and explain why they didn't participate  
19 is inadequate, specifically, the statistics of COVID  
20 numbers in January of 2021, the declaration of a state  
21 of emergency in January 2021 as well does not explain  
22 why the Nations didn't participate in December of 2020.

15:09

23 The second reason is we feel that the  
24 Stoney Nakoda is well-versed in the issues and this  
25 project, and well-versed enough to participate in a

1 hearing on March 22nd. They've been involved in  
2 consultations for the project since 2014, and have also  
3 participated in the environmental impact assessment  
4 process.

5 As Alberta Transportation stated in its written  
6 submission for this proceeding, the issue list for this  
7 hearing tracks issues that have been considered in the  
8 environmental impact assessment process. So we feel  
9 this means that the Stoney Nakoda Nations is  
10 well-versed in the project and the issues to be able to 15:10  
11 actively participate in the hearing in March.

12 And, finally, the adjournment significantly  
13 prejudices the project schedule and, therefore, the  
14 members of CRCAG and FFC. As this Board is aware, the  
15 members of both of these entities are individuals and  
16 businesses that were severely impacted by the 2013  
17 floods in Calgary and would be impacted by a future  
18 inevitable flood.

19 Now, any delay may now impact when the SR1 project  
20 is ultimately constructed, and it may mean that an 15:11  
21 additional flood season passes without sufficient  
22 upstream mitigation.

23 So time is of the essence for the members of the  
24 CRCAG and FFC such that the project should be approved  
25 as soon as possible and constructed as soon as

1 possible.

2 I would also note that the proposed three-month  
3 adjournment would mean that the hearing would fall  
4 squarely within this year's flood season, which the  
5 City just noted that may cause issues for the  
6 participation of its experts, and in CRCAG's and FFC's  
7 view, these experts are key, given their flood  
8 experience.

9 So, for those reasons, Mr. Chair and Panel  
10 members, we don't support the adjournment request by  
11 the Stoney Nakoda Nations. 15:12

12 I'm available for any questions if there are any.

13 MR. KENNEDY: I have no questions, thank you,  
14 Mr. Chair.

15 MS. VANCE: I have no questions either.

16 MR. CEROICI: I have no questions.

17 MR. HEANEY: I have no questions.

18 MS. ROBERTS: And I have no questions.

19 THE CHAIR: I have no questions, Mr. Bruni.

20 Thanks for participating. 15:12

21 MR. BRUNI: Thank you, Mr. Chair.

22 THE CHAIR: Mr. Rae and Mr. Snow.

23 MR. SECORD: Mr. Chair, with your permission, I  
24 would like to address what I believe was a misstatement  
25 by Mr. Fitch in his presentation to you.

1           He suggested that I was "cherry-picking" from the  
2 construction schedule, but -- and he drew your  
3 attention to the third page of the construction  
4 schedule dealing with the diversion channel.

5           And if you look at the three black lines, they  
6 refer to moving some poles around and, obviously, that  
7 particular -- those steps have nothing to do with  
8 regulatory approval, the fact that they are occurring  
9 when they are, and regulatory approval being  
10 December 1.

15:13

11           So I would submit that, when you take a look at  
12 the transcript and see what he said about the third  
13 page of G-3, and look at those actual activities, they  
14 are unrelated to regulatory approval and can be done,  
15 obviously done, without regulatory approval. That's  
16 number one.

17           Number two, my friends have taken an incredibly  
18 legalistic approach to our submissions, and I would  
19 point out that I looked at the Board's Rules of  
20 Practice, and I found nothing in there about motions,  
21 notices of motions, affidavits in support.

15:14

22           So I would submit you have flexibility in terms of  
23 addressing the Stoney Nakoda's motion and treating the  
24 SCLG's support of that motion, if need be, as a  
25 separate motion for an adjournment; but, to me, that's

1 a very legalistic approach that they are taking.

2 And so I just wanted to raise those two items.

3 Thank you.

4 THE CHAIR: Thank you, Mr. Secord. And I  
5 think the panel legal counsel will find our way through  
6 the transcripts, the appendices, and be able to make  
7 our own judgments in terms of, you know, scheduling  
8 prejudices, and make the call.

9 Mr. Kennedy?

10 MR. KENNEDY: Indeed. And, again, sometimes we  
11 have excursions in the process, and the process remains  
12 flexible, but I would encourage parties, including  
13 counsel, to be respectful of the process.

15:15

14 THE CHAIR: Thank you, Mr. Kennedy.

15 Mr. Rae and Mr. Snow, anything in response?

16 MR. RAE: Yes, Mr. Chairman, a few comments,  
17 if I may.

18 First of all, I'd like to thank my friend, Trevor,  
19 he's left the meeting, and I'll be taking over from  
20 this point on.

15:15

21 In answer to Mr. Kennedy's question about the  
22 first state of local emergency, I can advise that the  
23 local emergency on the Stoney reserves in the earlier  
24 part of 2020 was in place from March 17th to June 19th,  
25 2020.



1           A couple of comments on Mr. Kruhlak's position in  
2 regard to funding, I don't disagree with anything  
3 Mr. Kruhlak said, but it does, since he brought it up,  
4 it does deserve elaboration.

5           The funding that was made available to the  
6 Stoney Nakoda, of course, was not cash funding, it was  
7 simply an offer to be reimbursed if the Stoney Nakoda  
8 expended monies. In other words, if they expended  
9 monies on traditional land use studies, for example,  
10 they would be eligible to be reimbursed.

15:16

11           So, in terms of the hydrogeological studies and  
12 the hydrology studies that the Stoney Nakoda were  
13 seeking, they would have had to expend their own funds  
14 on those studies with the hope, and that's all it would  
15 have been, with a hope that they might be reimbursed by  
16 either Alberta Transportation or the Government of  
17 Canada. And as I pointed out in my original remarks,  
18 none of the funds that were offered to the  
19 Stoney Nakoda were allocated for any hydrology or  
20 hydrogeological studies.

15:17

21           So for the Stoney Nakoda to expend funds on those  
22 studies, or for them to expend funds on those studies,  
23 they are doing so on the basis that they may not be  
24 recoverable, and I dare say, would suggest, they would  
25 not be recoverable.

1 I note from my friend from the City of Calgary  
2 that the City of Calgary appears to be agreeing with  
3 the Stoney Nakoda position that the concerns of the  
4 City of Calgary trump those of upstream users.

5 Even on procedural issues like timing, the City of  
6 Calgary takes the position that their experts and their  
7 people are more important than those of the upstream  
8 landowners and their vocation and their people.

9 And, finally, I'd point out the dangerous position  
10 that Alberta Transportation is putting to the Board,  
11 Mr. Chairman.

15:18

12 In putting forward the proposed schedule, they  
13 are, in essence, pre-judging this Board's decision.  
14 Alberta Transportation is assuming that this Board will  
15 approve the project. They very much pre-judge what  
16 this Board is supposed to be looking at and deciding in  
17 the public interest, and for the Board to accede to  
18 Alberta Transportation's schedule in that regard is a  
19 dangerous position, I would submit, Mr. Chairman, it's  
20 a dangerous position for this Board to go down.

15:18

21 Unless there are any other questions, those are  
22 all my rebuttal remarks.

23 THE CHAIR: Mr. Snow? Did Mr. Snow have  
24 anything, do you know?

25 MR. SNOW: I don't have any other comments at

1           this time. Thank you.

2       THE CHAIR:                   Thank you.

3           Mr. Kennedy? Ms. Vance?

4       MR. KENNEDY:                I have no questions for Mr. Rae,  
5           and thank you.

6       THE CHAIR:                   And Panel members?

7       MS. ROBERTS:                Thanks, I have no questions.

8       MR. CERIOICI:                I don't have any questions either,  
9           thank you.

10      MR. HEANEY:                 I have no questions. I'd like to  
11           thank everyone who made presentations this afternoon.

15:19

12      THE CHAIR:                   Mr. Rae, I just have one question.

13           It seems confusing, in terms of the hydrology  
14           studies that you were hoping to undertake, but did not,  
15           but were given funding on the basis of, you know, carry  
16           out the work and then getting reimbursed, and you  
17           weren't sure if you would get reimbursed.

18           Did you make an actual request in writing for  
19           hydrology studies to be conducted, and what was the  
20           response? And, if that's available, perhaps you can  
21           have that as an undertaking, but was there a request  
22           for hydrology studies made by Stoney Nakoda?

15:20

23      MR. RAE:                    Mr. Chairman, the two letters from  
24           2016 that we've exhibited specifically requested  
25           funding for hydrogeological and hydrology studies.

1           Mr. Kruhlak was correct in saying that, in terms  
2 of the Springbank project, there was no specific budget  
3 submitted for hydrogeological and hydrology studies.

4           I can advise that there has been a budget  
5 submitted in that regard for the Bow River flood  
6 control structures.

7           There has been no response from Alberta  
8 Transportation to any of those requests for funding for  
9 the hydrology and hydrogeological studies, nor has  
10 there been any agreement or any offer of funding from  
11 the Government of Canada in regard to those studies.

12 THE CHAIR:                   Thank you. Can folks hear me? My  
13 cursor is spinning here, but can you hear my voice?

14 MR. KENNEDY:                We can hear you; your image is  
15 frozen.

16 THE CHAIR:                 Right. Okay. So, hopefully,  
17 this -- I think we're just about wrapped up, so as long  
18 as you can hear me, I can get to my concluding remarks.

19           Thank you, Mr. Rae, that's all I have.

20           So, in terms of wrap-up, I would like to, on  
21 behalf of the Panel, thank everyone for participating  
22 on this matter and taking the time today in, you know,  
23 somewhat of an unusual process for us, to some extent,  
24 but we think that it was best served, the best decision  
25 come from the best information, so we thank you for

15:21

15:21

1 taking the time today to meet with us.

2 We'll consider the information in reaching our  
3 decision on postponement or adjournment, and you can  
4 expect -- sorry, Mr. Kennedy?

5 MR. KENNEDY: Mr. Chair, I take it you're at the  
6 stage of concluding today's session, but you did  
7 mention at the outset, if we had questions of Mr. Rae  
8 or if we were able to deal with the advance funding  
9 claim, or some aspects of that, you might consider that  
10 before closing the proceeding.

15:22

11 THE CHAIR: You're right, my apologies. And  
12 thank you for that reminder, Mr. Kennedy.

13 So do you or Ms. Vance have some questions  
14 regarding funding?

15 MR. KENNEDY: I only have a couple of questions  
16 of Mr. Rae.

17 And, of course, the advance funding claim talks  
18 about a fee scale for counsel, and the Board has, in  
19 this case, adopted a tariff rate.

20 Have you reviewed that and do you have any  
21 comments on that?

15:23

22 MR. RAE: Mr. Chairman, yes, we have  
23 reviewed that, and the Board's proposal in that regard  
24 is acceptable to us.

25 MR. KENNEDY: That's all I have, Mr. Chair.

1 THE CHAIR: Thank you, Mr. Kennedy.

2 Ms. Vance?

3 MS. VANCE: Yeah, I might just ask one  
4 question just to clarify.

5 So you made this application for advance funding  
6 simultaneously with the adjournment request, and I  
7 suppose I just wanted to clarify that the two things  
8 are not related.

9 So does the funding request stand regardless of  
10 whether the hearing is beginning March 22nd or some  
11 other date? 15:24

12 MR. RAE: Yes, that is correct.

13 MS. VANCE: Thank you.

14 THE CHAIR: And at the pre-hearing with  
15 respect to cost requests or funding requests, we did  
16 allow Transportation to respond. However, I think,  
17 Transportation, you have responded and you take no  
18 issue; is that correct?

19 MR. KRUHLAK: That's correct, Mr. Chairman.  
20 We'll make arrangements with Mr. Rae's office to  
21 transmit those funds. 15:24

22 THE CHAIR: Okay. Thank you.

23 Panel members, did you have any questions  
24 regarding funding?

25 MR. CEROICI: I have no questions, thank you.

1 MS. ROBERTS: I have no questions.

2 THE CHAIR: Mr. Heaney?

3 MR. HEANEY: I have no questions at this time.

4 I guess this is the last time, so.

5 THE CHAIR: That's right. Thank you.

6 And thanks, Mr. Rae. And, Mr. Kennedy, thanks for  
7 that reminder as I was trying to get everybody to  
8 perhaps a needed bathroom break, so I rushed into that,  
9 so thank you for that reminder.

10 So I think we have concluded now. So, once again,  
11 thank you to everyone for participating.

12 And, you know, the Panel understands that -- I  
13 mean, time is of the essence in terms of a decision on  
14 this, and you can expect a decision from the Panel  
15 within the next few days. We'll have that out in  
16 writing and distributed to all parties.

17 So, thanks again, and please consider the  
18 adjournment application hearing closed. Stay well,  
19 everyone, and stay safe.

20

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21 PROCEEDINGS CONCLUDED

22

23

24

25

15:25

1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages  
4 1 to 80 are a complete and accurate transcript of the  
5 proceedings taken down by me in shorthand and transcribed  
6 from my shorthand notes to the best of my skill and  
7 ability.

8 Dated at the City of Calgary, Province of Alberta, on  
9 February 4, 2021.

10

11

12

"Lorelee Vespa"

13

Lorelee Vespa, CSR(A), RPR, CRR

14

Official Court Reporter

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- I N D E X -

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