



IFEOMA M. OKOYE, LLM
(780) 412-2716
iokoye@ackroydlaw.com

ASSISTANT: SANDRA L.
(780) 423-8905 ext 305
slodoen@ackroydlaw.com

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June 4, 2021

EMAIL TO laura.friend@nrcb.ca

Natural Resources Conservation Board
1900, 250 - 5 Street SW
Calgary Alberta Canada T2P0R4

Attention: Laura Friend, Manager Board Reviews

Dear Ms. Friend:

**Re: SCLG Cost Claim Reply
NRCB Application No. 1701
Alberta Transportation (AT) SR1 Project**

The SR1 Concerned Landowner Group (SCLG) has reviewed AT's response to the SCLG's cost claim. In accordance with the Board's schedule, the SCLG submits the following comments in reply to AT's submissions dated May 21, 2021 ("AT's Response").

For the reasons that follow, the SCLG submits that its cost claim is in alignment with section 31(3) of the *Rules of Practice of the Natural Resources Conservation Board Regulation, AR 77/2005* (the "Rules"). The cost claim relates to the issues identified for the hearing and is directly and necessarily related to the Hearing, the scope of the Hearing and the representations of the SCLG at the Hearing.

General Comments

1. AT states the following at pdf 5 of AT's Response:
 - a. the NRCB will normally require all interveners to pay a significant portion of the cost of their intervention. Costs are not meant to fully indemnify interveners. Intervenors may be expected to bear a reasonable proportion of the costs of the preparation and presentation of an intervention. [Alberta Sulphur Terminals Ltd. Report on Final Costs, Application No. 0702 (August 13, 2009) ["AST"], p. 2].

2. Note the use by AT of the word “normally” in the paragraph above.
3. At pdf 6-8 and 12, of AT’s Response, AT relies on the following NRCB Cost Decisions:

⁵ Alberta Sulphur Terminals Ltd. Report on Final Costs, Application No. 0702 (August 13, 2009) [“AST”], pg. 2

⁹ Vacation Alberta Corporation Report on Final Costs Awards, Application No. 9201 (February 9, 1994) [“Vacation Alberta”], pg. 6

¹⁰ Three Sisters Golf Resorts Inc. Report on Final Costs Award, Application No. 9103 (February 12, 1993) [“Three Sisters”]. pg.10

¹⁴ Agrium Products Inc. Report on Final Cost Awards, Application No. 03-01 (October 22, 2004) [“Agrium”], pg. 37

²⁵ Glacier Power Ltd. (Dunvegan Hydroelectric Facility) Cost Order 2009-008 (February 24, 2009)

4. None of these cost decisions involved the expropriation of private lands by an Alberta Government Department for a public works project. AST was a private company. It applied to construct a sulphur forming and shipping facility on private land acquired by the applicant. Vacation Alberta was a private company. It applied to expand the existing Westcastle Park ski area in the West Castle Valley southwest of Pincher Creek into a four-season destination resort. Three Sisters was a private company. It applied to construct a recreational and tourism project in the Town of Canmore. Agrium was a private company. It applied to extend its phosphogypsum storage area. Glacier Power was a private company. It applied to construct a run-of-river hydroelectric project on the Peace River.
5. In this case, an NRCB decision to approve the SR1 project will result in the expropriation by AT of private lands owned by members of the SCLG. Expropriation of private lands in this case should result in full indemnification of the SCLG legal and expert costs incurred in the NRCB hearing process. The case of *Smith v Alliance Pipeline Ltd.*, [2011 SCC 7](#), stands for the proposition that in an expropriation it is the rule that the claimant should obtain full reasonable reimbursement of costs from the expropriating authority.
6. In *Lynch v. St. John’s (City)*, 2020 NLCA 31, the Court stated:

[86] The Lynches in this case stressed the statements in earlier expropriation cases that the legislation should be interpreted in such a way that the landowner who has been deprived of his or her land should not be “victimized in loss because of the accident that his land [is] required for public purposes” (*Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160 per Fish J. at para. 55) which means that the landowner should be made economically whole by being provided

“full compensation” (*Alliance Pipeline*, at para. 56, citing *Dell Holding Ltd. v. Toronto Area Transit Operating Authority*, [1997 CanLII 400 \(SCC\)](#), [1997] 1 S.C.R. 32 at paras. [20-22](#)). The cases recognize that the legislation should be interpreted in favour of the landowner with this view in mind because of the vulnerable position that the landowner is in (*Alliance Pipeline*, at para. 55, citing *Diggen-Hibben Ltd. v. R.*, [1949 CanLII 50 \(SCC\)](#), [1949] S.C.R. 712 at 715).

[87] The Lynches also relied on K.J.Boyd’s text, *Expropriation in Canada: A Practitioner’s Guide* (Aurora, Ontario: Canada Law Book Inc., 1988), quoting the Ontario Law Reform Commission, to the effect that “the system of assessing compensation must be weighted to some extent in favour of the individual” and that there is an obligation of the state “to repair the injury caused to particular individuals for the public good, and to minimize the loss, inconvenience and disturbance to the life of its citizens to as great an extent as possible.” (at 143-144; emphasis added).

Budgeted Amounts

7. At pdf 6 of AT’s Response, AT states:

(d) final cost awards are made having regard to the length of the hearing, the contribution of the interveners’ experts to relevant issues, and budgets determined by the advance funding process. Final cost awards will be made based on what actually transpires at the hearing. However, the Board generally expects that final cost claims will closely correlate to the advance funding decision.

8. The following Table sets out the budgeted amounts:

Item	SCLG PHC Budget (not including GST)	Adjusted Amount in PHC Decision (not including GST)	Amount Claimed in SCLG Final Cost Claim
Austen Engineering, PHC 19	106,151	55,187	86,601 (+ GST of 4,530)
Dr. Jon Fennell, PHC 14, Tab 4	21,000	18,360	31,320 (+ GST of 1,566)
Mr. Cliff Wallis, PHC 14, Tab	29,430	19,710	30,713 (+ GST of 1,535)
Dr. Brian Zelt, PHC 14, Tab 8	12,000	12,000	12,000 (+GST of 600)
Dr. Terry Osko, PHC 14, Tab 10	34,800	15,000	23,618 (+ GST of 1,180)
Mr Allan Locke, PHC 20	18,900	18,900	33,075 (+ GST of 1,653)

Ackroyd LLP, PHC 14, Tab 11	204,650	161,200	268,621 (+ GST of 13,431)
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9. There are a number of reasons why the amounts claimed in the Final Cost Claim exceeded the PHC budgeted amounts. First and foremost, the application materials were voluminous. They were also difficult to navigate. As noted in the Ignasiak Report Ex. 275, Tab 5, pdf pg.130:

However, two events have occurred that have resulted in longer regulatory timelines thus far than were originally anticipated:

1. The finding by the Canadian Environmental Assessment Agency that the originally filed Environmental Impact Statement was deficient. This resulted in a delay of approximately 6 months.
2. The issuance of 593 first round information requests, with several sub-questions, by provincial regulators. This number of information requests is unprecedented for a major project. (Emphasis added).

10. At pdf pg. 139, Mr. Ignasiak further wrote:

As it pertains to the SIR process, the number of information requests in SIR #1 is unprecedented. I have worked on large-scale mining projects (which include processing facilities and engage far more environmental disciplines than SR1) that were subject to less than half this many information requests in the first round. Typical first round SIRs consist of approximately 190 information requests and very often less.

11. The sheer size of the application materials was the main reason why the budgeted amounts were exceeded.

Austen Engineering

12. There was also another reason for the budget exceedances by Austin Engineering (AEL). In preparing the initial budget, AEL had reviewed the existing application filed by AT which was posted on the NRCB website but which was several years old (March 31, 2017). The NRCB issued its Prehearing Conference Decision on December 10, 2020 (Ex. 156). Over a week later, on December 18, 2020, AT filed a new Final Preliminary Design Report (Ex. 160). Why was the September 25, 2020 Final Preliminary Design Report not filed by AT until December 18, 2020? Appendices B, C, D, E & F to the Final Preliminary Design were eventually filed on February 1, 2021 (Exhibits 173-180). This new and late filed material resulted in a lot of extra work for AEL.

13. As noted in Ex. 160:

To:	Matthew Hebert Alberta Transportation	From:	John Menninger, P. Eng. Stantec
File:	110773396	Date:	December 18, 2020

Reference: Comparison of SR1 Interim Design Report (2017) and Preliminary Design Report (2020)

This memorandum summarizes the revisions incorporated into the Final Preliminary Design Report (September 25, 2020) relative to the Draft Preliminary Design Report (March 31, 2017), also referred to as the Interim Design Report. The Preliminary Design for SR1 was completed through an iterative process that incorporated multiple rounds of geotechnical data collection, input from the future operator Alberta Environment and Parks and an external review process with the Project Review Board. Evolution of a project's design, including estimated construction costs, is standard as additional data becomes available, stakeholder outreach and regulatory compliance tasks are completed, and reviews from the client and operator are incorporated.

14. It is important to note that changes to the Flood Plain Berm design were not noted or summarized in the December 18, 2020 memo, Ex. 160.
15. Attached as **Appendix A** is a summary of the Austin Engineering stranded costs incurred between the start of the design review on December 8, 2020 and December 18, 2020 when the updated Final Preliminary Design Report was uploaded to the NRCB website. Had AT filed the Final Preliminary Design Report prior to December 8, 2020, these costs (\$7,282.88) would have been saved. Based on the updated preliminary design, AEL had to redo some of the analysis, calculations and assessments that were started between December 8 and 18, 2020. These recalculations and re-assessments increased the costs from the originally budgeted amounts.

Terry Osko

16. The SCLG asked Dr. Osko to comment on AT's position regarding his costs exceeding the approved budgeted amounts. Dr. Osko provided the following comments:

“Regarding costs exceeding the Board's approved amounts, I am a little perplexed as to how the board can pre-emptively decide how much time each expert can or should spend on their evidence. The board does not know what arguments or evidence we will be developing, so how can they know how much it will cost? By determining the costs upfront, the Board also predetermines the hearing outcome by limiting the degree to which arguments can be developed. As professionals, do we stop developing arguments when the Board's pre-hearing cost determinations are reached, or do we proceed until we are satisfied with the thoroughness of our assessments? My conscience leads me to do the latter.

In my own case the Board had this to say:

"While the Board views the issue of noxious weeds and invasive species as important, it does not believe the number of hours requested to critique this area of the EIA justified."

Paraphrased, they said, "while weeds are important, how much could someone possibly have to say about weeds?" Well, it turns out I had a lot to say about weeds which took considerable research and time in thinking through all of the possible impacts and mitigations. In this case it was the Board that "presumed" that the topic of weeds warranted little attention, which is likely because of the presently accepted paradigm of reactive responses to weed establishment rather than prevention. These hearings should be opportunities to change paradigms by expanding thought on given topics, rather than confining thought to what is expected and ensuring that through a restricted budget.

As experts, we have a pretty good idea of what time will be required to develop our evidence. For the most part, our initial estimate of \$34,800 was less than the final cost claim of \$23,618.

Cliff Wallis

17. The SCLG asked Mr. Wallis to comment on AT's position regarding his costs exceeding the approved budgeted amounts. Mr. Wallis provided the following comments:

My submitted budget was \$29,430 plus GST and my final billing was \$30,713 so I don't see much discrepancy there. Given the amount of documentation with associated update/cross-referencing issues to go through, I think I was actually pretty efficient.

A key to the amount of time I budgeted was the number of issue areas that have implications for biodiversity – soils and hydrology needed to be reviewed as well as the obvious wildlife and vegetation sections. That also meant attendance / transcript review / cross examination questions in each of those issue areas.

The amount of evidence to go through exceeded my expectations. Until you start actually reviewing the documentation in detail, it is difficult to understand all the issues as well as the complexity of the documentation itself.

There were in excess of 50 exhibits with implications on biodiversity as well as other documents on the record not originally registered as exhibits to go through with environmental issues relevant to my area of expertise. Some of those other documents SCLG had to request to be put in as exhibits.

There were also updates in subsequent documents that needed to be cross-referenced and checked to see which was the relevant/up to date/actually used

information since some of the proponent's environmental analyses were based on older information/exhibits. This complexity became evident as I got into the detail of the exhibits.

So, in summary, I feel that my estimates were reasonable given the work that needed to be done to assess the considerable relevant documentation. The increased complexity/cross-referencing added to the amount of work budgeted for. Nonetheless, my final billing was very close to the original estimate.

Dr. Jon Fennell

18. The SCLG asked Dr. Fennell to comment on AT's position regarding his costs exceeding the approved budgeted amounts. Dr. Fennell provided the following comments:

"I agree with Dr. Osko on his general points.

If you recall in the Pre-hearing meeting, the NRCB decided to cut back on original estimates by removing climate change, yet there was considerable focus on that topic during the hearing (which certainly generated extra cost). Part of this actually led to a full retraction by AT on their snowpack analysis as they were using the wrong data. This required researching and data evaluation to decipher their mistake. Also, additional materials were submitted as Aids to Cross that required reviewing in preparation for cross-examination and testimony.

As Dr. Osko says, our original costs were estimates. No one knows what it is really going to take to vet hearing materials (which kept changing), read transcripts, and determine where the remaining gaps in logic as well as issues remain.

Time was not spent listening to all the testimony, so that is not a reasonable criticism. We are professionals and understand the rules. I only attended (or logged hours for) portions of the hearing that were relevant where attended. This included the AT panel presentations and cross-examinations in the Water and Climate sessions, which identified areas to further explore for the NRCB panel's benefit. If AT had done a better job of assembling this application it would not have taken as long, but there were many areas that AT failed to cover adequately.

I believe my costs are reasonable and reflect the time I spent dealing with all the topic areas I was asked to cover off (i.e. hydrogeology, groundwater modelling, geochemistry and climate change).

Ultimately it will be up to the NRCB panel members to decide the merit of my review materials and the hearing participation that I provided.

I believe my itemized list of hours and explanations should help them in their decision.

Mr. Allan Locke

19. The SCLG asked Mr. Locke to comment on AT's response regarding his costs exceeding the approved budgeted amounts. Mr. Locke provided the following response:

My estimate was off because I based it on reviewing 50 pages of application materials. As it turned out, I was way off as I ended up reviewing more than 3,000 pages of application materials. The hours of doing the review are included in my invoice. I attach a list of the documents that I reviewed.

20. The list of documents that Mr. Locke reviewed in preparing his report is attached as **Appendix B**. As can be seen, at over 3,000 pages of materials reviewed, Mr. Locke's costs cannot be at the original budget which was based on reviewing 50 pages of material.

Legal Costs

21. At pdf 9 of AT Response, it states:

16. Alberta Transportation submits that it would be inappropriate to award costs related to legal services performed prior to the issuance of the *Pre-Hearing Conference Decision Report* (December 10, 2020) as that work does not relate to the preparation and presentation of intervener submissions at the hearing itself, but instead principally relates to the preparation and request for intervener funding.¹⁸ Similarly, it would be inappropriate to award costs related to legal services performed after the closing of the hearing.¹⁹

¹⁸. See for example: SCLG Final Cost Claim, pdf. pg. 22-31

22. Contrary to AT's statement above, pages 22 to 31 of the SCLG Cost Claim do not principally relate to the request for intervener funding. The main activity described on pages 22 to 31 were steps to get ready for the fast-approaching NRCB hearing and to assemble experts who would be able to assist the Board with its deliberations on the merits of the SR1 application.
23. Further, the pre-hearing submissions of the SCLG dealt with other matters that were not related to intervener funding. Submissions were made on scope of the hearing, issues to be heard, location and mode of hearing. All the steps taken prior to the submissions, including seeking and retaining experts, communicating and meeting with SCLG members and experts were all necessary for the presentation of the pre-hearing

submissions. The intervener funding aspect was a small part of the pre-hearing submissions and conference.

24. AT relies on the AER's procedure of not allowing costs incurred prior to issuance of a notice of hearing as support for its submission that costs should not be awarded for legal services incurred prior to the issuance of the Pre-Hearing Conference Decision Report (December 10, 2020). While the AER has adopted that procedure, there is no such provision in the NRCB's Rules or in the Intervener Funding Guideline. In addition, other administrative tribunals such as the Alberta Utilities Commission (AUC) do not restrict cost recovery to a period after the issuance of a notice of hearing. The AUC's Rule 009's¹ eligibility requirement for costs is that the person be a "local intervener" as described in Section 22 of the *Alberta Utilities Act*. Once that requirement is met, the intervener is entitled to claim for costs which is at the discretion of the AUC.
25. At pdf 10 of AT's Response, paragraph 21, AT alleges that the legal fees should be assessed for entries that constitute duplication of work such as:
 - (a) legal counsel reviewing and responding to internal communications with one another via email and text messages;
 - (b) extensive correspondence with witnesses from each other's assigned topic blocks.
 - (c) both legal counsel attending the same meetings and charging for the full time of their attendance; and
 - (d) extensive overlapping attendance of both legal counsel through the duration of the hearing.²³

²³ See for example: SCLG Final Cost Claim, pdf pgs. 47-53;
26. The referenced pages of SCLG Final Cost Claim relate to the period of the hearing. Because of the Covid-19 pandemic, both counsel were operating from different locations both prior to and during the hearing. The only means of communication were through emails, phone calls or text messages. It was important that both counsel communicate through these means during the lead up to and during the hearing to ensure effective representation of SCLG at the hearing.
27. It is worth noting that AT had at least 4 lawyers from McLennan Ross LLP working on the file during the NRCB hearing process:
 - Ron Kruhlak, QC (a 1984 call)
 - Gavin Fitch, QC (a 1992 call)
 - Michael Barbero (a 2011 call) and
 - Marika Cherkawsky (a 2019 call).

¹ <https://www.auc.ab.ca/Shared%20Documents/rules/Rule009.pdf>

28. Most of the correspondence on the referenced pages 47-53 were correspondence with members of the SCLG. There is no division of work in respect of communicating with SCLG members or experts. If one counsel is tied up in cross-examination or direct evidence and email is directed to that counsel, the other counsel steps in to address the correspondence. This was efficient and effective for SCLG members, experts, the Board, and other counsel. Further, it would have delayed the hearing if one SCLG counsel, for instance, Mr. Secord, would have responded to all inquiries from witnesses in his assigned blocks during the time he was cross-examining AT's witnesses.
29. We would further note that an in-person hearing would have reduced the extent of the email correspondence because the SCLG members would be in the same room and could ask questions of counsel at any time. With a virtual hearing, it is inevitable that significant time will be spent communicating with SCLG members and experts via email, text messages or phone calls.
30. There was no overlapping attendance at the hearing for SCLG's counsel. As pdf p. 47 to 51 of SCLG Cost Claim demonstrate, while both counsel were logged in to the hearing on some days (for instance, March 26 and 31), counsel effectively used their time on other matters such as preparing cross-examination for the next topic block, responding to emails, preparing aids-to-cross during the time the counsel was not actively participating. Multi-tasking in this manner was effective in keeping costs down.
31. At page 11 of AT's Response, AT states:
 22. Alberta Transportation submits that it is appropriate for the Board to assess the value of the extensive cross-examinations conducted by the Cost Claimants to determine whether the full extent of those cross-examinations were necessary to provide the Board with an understanding of the issues and whether that time might have been reduced. Alberta Transportation notes that much of the evidence presented by the Cost Claimants' witnesses or the cross-examination by legal counsel appeared to focus on information outside the "reviewable project", such as the MC1 alternative or future and existing projects on the Bow River.²⁴
 23. The Cost Claimants' extended cross-examination on issues outside of the hearing not only created an unnecessary cost for Alberta Transportation and the Board, it is not reasonable that the cost should now be paid to support that activity.
32. The SCLG denies that cross-examination conducted by its legal counsel focussed on information outside the matters identified in the prehearing meeting decision. SCLG counsel did not ask questions about projects on the Bow River. Alternatives to SR1 was specifically identified as within the scope of the hearing. Indeed the first number of NRCB

hearing exhibits relate to MC1 (see Exhibits 03 to 07). The Board stated at page 6 of its Prehearing Conference decision Report (Ex. 156, pdf. Pg.6-7:

SECTION 3: ISSUES RAISED FOR EXAMINATION AT THE HEARING

The panel considered all issues raised by parties who filed written submissions or participated in the pre-hearing. The issues raised, included:

- Project need and justification
- o Alternatives to the project
- o Social and economic project costs and benefits

Subject to the specific comments herein, the Board accepts that each of the above issues have a role in the NRCB's determination of whether the project is in the public interest. The panel encourages all directly affected parties to focus on these matters when preparing their written submissions and presentations during the hearing. At the hearing, the panel will hear evidence and argument relating to the identified reviewable issues. The panel will also be prepared to consider additional matters, provided they are within its jurisdiction and are specifically relevant to its mandate of determining public interest of the project.

33. The SCLG submits that the foregoing provides sufficient justification as to why its legal costs should not be reduced or restricted to the budgeted amounts approved in the pre-hearing decision report. The SCLG respectfully requests the Board to approve its legal costs in full.

Experts' Costs

34. For the reasons that follow, the SCLG submits that its experts contributed to an understanding of the issues at the hearing as they relate to the scope of their expertise and their costs should not reduced or restricted to the budgeted amounts.

35. At pdf 13, paragraph 30, AT states:

30. Alberta Transportation submits that a review of the invoices prepared by many of the experts fees shows that they include significant time spent on the following tasks:

- (a) time entries relating to preparing cross-examination for legal counsel and monitoring the hearing during topic blocks the expert was not presenting evidence during;
- (b) time entries related to reviewing transcripts; and
- (c) time entries related to preparing the final argument.²⁶

²⁶ See for example: SCLG Final Cost Claim, pdf. pg. 55, 57-58, 66, and 72-73

36. The SCLG submits that it is standard practice for experts to assist legal counsel with cross-examination questions and final argument. As AT's counsel is aware, legal counsel are not subject matter experts in the fields that the experts are retained to provide expertise. Therefore, counsel typically rely on experts to assist them with cross-examination and argument in those areas. The reliance on experts to assist with final argument is not lessened because the final argument proceeded orally. It is standard for counsel to write their argument down especially where multiple issues are involved irrespective of whether the final argument proceeds orally. The SCLG submits that the fact that final argument proceeded orally is not a justification for reducing the SCLG's legal and experts' costs.
37. The SCLG submits that it is necessary for experts to review transcripts as part of their preparation to present their testimony. Matters typically arise from cross-examination of opposing party that interveners' experts may need to clarify or comment on. To ensure accuracy in their commentary, it is important that experts review transcripts and appropriately address matters arising from the transcripts. The SCLG notes that its experts referred to transcript volumes and pages in their direct evidence.
38. AT asserts at pdf 13, paragraph 31 that experts "Claimable costs for time in attendance should be reduced to reflect the actual time the expert witness was required to attend (i.e. during the topic block that expert presented evidence during)." The limited hearing time that some of the SCLG experts' spent in "non-relevant" topic blocks was unavoidable because of time overruns. To ensure that the experts were ready to proceed to give evidence when called upon and to reliably predict when they would be required to give evidence, the experts had to pay attention to the hearing outside of their topic blocks. Further, some information gleaned from other areas that were relevant to the expert's area assisted experts in providing context in their direct evidence.
39. At pdf 14, paragraph 32, AT notes instances of where it believes that an expert's evidence was of limited assistance to the Board and submits that the Board should reduce the expert's costs accordingly. The SCLG submits that it is not for AT to decide the value or assistance that SCLG's experts' evidence provided to the Board; that is a decision for the Board to make.
40. One of the instances provided by AT as being of limited assistance to the Board is where "the expert's evidence attempted but failed to challenge or disprove Alberta Transportation's modeling that demonstrated any potential impacts would extend beyond the Project Development Area, would be short lived and reversible". AT's footnote 28 referenced Ex. 395, p. 1972-1999. A review of those pages indicates that AT was referring to the evidence of Dr. Fennell on climate change (snow pack) and hydrogeology modelling. While making this reference, AT failed to acknowledge that its expert, Mr.

Wood, later acknowledged the accuracy of Dr. Fennell's climate change evidence and retracted his criticism of Dr. Fennell's climate change evidence at Ex. 406, p. 2197 to 2199 and 2201 to 2204. The SCLG submits that the Board should consider AT's acknowledgment of the accuracy of Dr. Fennell's evidence on climate change in deciding the value of Dr. Fennell's evidence.

41. AT further states that an expert's costs should be reduced because the "expert presented evidence on recommended mitigation measures that Alberta Transportation had already committed to implement ²⁹". Footnote 29 refers to Ex. 406, p. 2458-2465. The reference relates to the cross examination of Mr. Wallis by Mr. Kruhlak. A review of pages 2458 to 2465 clearly shows that there is a disagreement on the extent of the application of the mitigation measures. Mr. Wallis clearly noted a disagreement on the extent of the flooding that is allowed to pass and the assessment of the cumulative impacts of the project. See page 2460, 2462 to 2464 of Ex. 406 in this regard.
42. Mr. Wallis' 2nd condition recommended against immediate sediment removal following a flood. Although this condition is consistent with AT's proposal, it is not consistent with the Impact Assessment Agency of Canada (IAAC)'s proposed condition of approval which requires sediment removal within 7 days of a flood. Mr. Wallis' recommendations are not completely in alignment with AT's proposal. Further, Mr. Wallis' evidence went beyond the two recommendations. To assert that Mr. Wallis' invoice should be reduced because he presented evidence on mitigation measures that AT had to some extent committed to amounts to taking a narrow view of Mr. Wallis' evidence. The SCLG submits that Mr. Wallis' costs should not be reduced as suggested by AT.
43. AT states at pdf 14, paragraph 32(d) that the SCLG's expert's costs (in this case, Dr. Jon Fennell) should be reduced because he "lacked the appropriate expertise to comment on the issues he or she presented evidence on³⁰". Footnote 30 states:

"[A]n expert's assistance must be related to that expert's area of special knowledge." see NRCB Intervener Funding Process Guide pdf. pg. 14; See for example Exhibit 395, pg. 1790-1802, 1947-1954, and 1975."
44. AT appears to be suggesting that Dr. Fennell commented on matters beyond his expertise in his evidence. The SCLG submits that AT's suggestion should be rejected in its entirety. A review of Ex. 395, p. 1947-1954 and 1975 demonstrates that Dr. Fennell has general knowledge of air quality and impacts of PM 2.5 on human health and he relies on atmospheric information vetted by reliable organizations in understanding the drivers of climate and precipitation changes. See Ex. 395, p. 1949.
45. On the issue of climate change and the impacts it may have on the operation of the SR1 Project, Dr. Fennell's evidence clearly indicates that climate change is a consideration

that should be taken seriously. Mr. Barbero's attempt during cross to link Dr. Fennell's statement to be a statement on dam safety is an unsupported stretch of Dr. Fennell's evidence.

46. At pdf 14, paragraph 32(e), AT, while referring to Ex. 395, p. 1881 to 1884, stated that Dr. Fennell's costs should be reduced on the basis that he advocated for a particular result, as opposed to acting as an objective and independent expert witness. The SCLG denies that Dr. Fennell's evidence advocated a particular result. Dr. Fennell did not advocate for the selection of MC1 as a project alternative. His comments at Ex. 385, p. 1881 were based on a comparison of the benefits of MC1 vs SR1. The comparative comment does not detract from Dr. Fennell's evidence that SR1 is problematic and does not serve the public interest well. Making a comparative comment about MC1 does not equate to advocating for the selection of MC1. In any event, Dr. Fennell recognized in his direct testimony that the focus of the Board's review was SR1 and not MC1. See Ex. 385, p. 1881, lines 7-15.

Conclusion

47. The SCLG submits that its legal and experts costs are reasonable, directly and necessarily related to the proceeding and should be allowed in full. The budgeted amounts at the PHC were merely budgets. Until actual steps are taken in reviewing the AT's voluminous materials and preparing for the hearing, it was difficult to precisely predict the actual amount of time needed to review the materials and to prepare for the hearing. The SCLG has provided sufficient information to justify the differences in the PHC budgeted amounts versus the final amounts claimed.
48. The extensive amount of volunteer hours (3,008.50 hours)² from SCLG members is further evidence of the complexity of the SR1 project. The SCLG notes that the early intervention of its members contributed to the process and likely resulted in changes to the project from its original 2016 proposal. The SCLG submits that the Board should consider the over 3,000 hours volunteered by SCLG members in this project in determining and allowing the SCLG's cost claim in full. The SCLG respectfully requests that the Board allow its cost claim in full.

² SCLG Cost Claim, pdf 94.

Yours truly,

ACKROYD LLP

Original signed by

IFEOMA M. OKOYE

IMO/sl

Encls.

AUSTIN ENGINEERING LTD - SUMMARY OF HOURS

PROJECT DESCRIPTION | DAM - SPRINGBANK SR1 DESIGN REVIEW (DAM-2012-SCLG-090) |

Row Labels	TOTAL HOURS	TOTAL MATERIALS	Sum of MILEAGE	TOTAL COST
2020-12 (DEC)	57.25	\$0.00		\$7,282.88
AMIT TIWARI	22.25	\$0.00		\$1,985.81
ANALYSIS	3.00	\$0.00		\$267.75
12/17/2020	3.00	\$0.00		\$267.75
DOCUMENT CONTROL	5.50	\$0.00		\$490.88
12/8/2020	2.00	\$0.00		\$178.50
12/9/2020	1.00	\$0.00		\$89.25
12/16/2020	2.50	\$0.00		\$223.13
DOCUMENT REVIEW	8.50	\$0.00		\$758.63
12/8/2020	3.00	\$0.00		\$267.75
12/9/2020	1.00	\$0.00		\$89.25
12/15/2020	2.50	\$0.00		\$223.13
12/17/2020	2.00	\$0.00		\$178.50
MEETING	1.25	\$0.00		\$111.56
12/16/2020	1.25	\$0.00		\$111.56
TEMPLATE PREPARATION	1.50	\$0.00		\$133.88
12/8/2020	1.50	\$0.00		\$133.88
RISK REVIEW	2.50	\$0.00		\$223.13
12/17/2020	2.50	\$0.00		\$223.13
CHLOE SIRGES	6.75	\$0.00		\$590.63
BACKGROUND REVIEW	3.75	\$0.00		\$328.13
12/15/2020	3.75	\$0.00		\$328.13
MEETING	2.75	\$0.00		\$240.63
12/8/2020	0.50	\$0.00		\$43.75
12/16/2020	2.25	\$0.00		\$196.88
(blank)	0.25	\$0.00		\$21.88
12/10/2020	0.25	\$0.00		\$21.88
HANNA HAMID	4.00	\$0.00		\$489.00
DOCUMENT REVIEW	2.00	\$0.00		\$244.50
12/8/2020	2.00	\$0.00		\$244.50
REVIEW BACKGROUND DOCUMENTS	2.00	\$0.00		\$244.50
12/15/2020	2.00	\$0.00		\$244.50
JENN WILSON	1.00	\$0.00		\$168.25
PROJECT MANAGEMENT	1.00	\$0.00		\$168.25
12/15/2020	0.50	\$0.00		\$84.13
12/17/2020	0.50	\$0.00		\$84.13
ROGER AUSTIN	7.00	\$0.00		\$1,485.75
ANALYSIS	2.00	\$0.00		\$424.50
12/15/2020	2.00	\$0.00		\$424.50
CONFERENCE CALL	2.00	\$0.00		\$424.50
12/15/2020	2.00	\$0.00		\$424.50
DOCUMENT REVIEW	3.00	\$0.00		\$636.75
12/10/2020	3.00	\$0.00		\$636.75
RUTH KEYES	16.25	\$0.00		\$2,563.44
BACKGROUND REVIEW	7.25	\$0.00		\$1,143.69
12/8/2020	3.00	\$0.00		\$473.25
12/9/2020	1.00	\$0.00		\$157.75
12/10/2020	3.25	\$0.00		\$512.69
CONFERENCE CALL	9.00	\$0.00		\$1,419.75
12/15/2020	3.50	\$0.00		\$552.13
12/16/2020	3.00	\$0.00		\$473.25

AUSTIN ENGINEERING LTD - SUMMARY OF HOURS

PROJECT DESCRIPTION | DAM - SPRINGBANK SR1 DESIGN REVIEW (DAM-2012-SCLG-090) |

Row Labels	TOTAL HOURS	TOTAL MATERIALS	Sum of MILEAGE	TOTAL COST
12/17/2020		2.50	\$0.00	\$394.38
Grand Total		57.25	\$0.00	\$7,282.88

Review of Documents

Exhibit Number	Reviewed and Referenced in my Report	Pages
N/A	Alberta Sustainable Resource Development. 2012. Bull Trout Conservation Management Plan 2012-2017. Alberta Sustainable Resource Development. Species at Risk Conservation Management Plan No. 8. Edmonton, AB, 90 pp.	100
20	Alberta Transportation. 2018a. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 1: Project Description – Prepared by Stantec, March 2018.	253
21	Alberta Transportation. 2018b. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 2: Assessment Approach – Prepared by Stantec, March 2018.	41
22	Alberta Transportation. 2018c. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 3A: Effects Assessment (Construction and Dry Operations) – Prepared by Stantec, March 2018.	5
46	Alberta Transportation. 2018d. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 3B: Effects Assessment (Flood and Post-Flood Operations) Assessment of Potential Effects on Water Quality – Prepared by Stantec, March 2018.	42
47	Alberta Transportation. 2018e. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 3B: Effects Assessment (Flood and Post-Flood Operations) Assessment of Potential Effects on Aquatic Ecology – Prepared by Stantec, March 2018.	32
73	Alberta Transportation. 2018f. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 4: Appendices, Appendix K - Surface Water Quality Report – Prepared by Stantec, March 2018.	125
75	Alberta Transportation. 2018g. Springbank Off-stream Reservoir Project - Environmental Impact Assessment – Volume 4: Appendices, Appendix M – Aquatic Ecology – Attachment 8A Fish Passage Analysis - Prepared by Stantec, March 2018.	198
?	Alberta Transportation. 2019a. Response to CEAA Supplemental Information Request Package 3 - August 31, 2018. Prepared by Stantec, May 2019.	244
93	Alberta Transportation. 2019b. Response to NRCB and AEP Supplemental Information Request 1 - July 28, 2018. Prepared by Stantec, May 2019.	302
138	Alberta Transportation. 2020a. Response to NRCB and AEP Supplemental Information Request 2 - November 18, 2019. Prepared by Stantec, June 2020.	506
157	Alberta Transportation. 2020b. Response to AEP Supplemental Information Request 3 - November 4, 2020. Prepared by Stantec, December 2020.	116
?	Alberta Transportation. 2020c. Response to NECB and AEP Supplemental Information Request 2 - November 18, 2019. Prepared by Stantec, April 2020.	214
?	Alberta Transportation. 2020d. Response to Impact Assessment Agency of Canada Information Request Package 4 – Technical Review Round 2, March 23, 2020. Prepared by Stantec, June 2020.	256
?	Alberta Transportation. 2020e. Springbank Off-stream Reservoir Project. Changes to EIA Conclusions. Prepared by Stantec, June 2020.	6
164	Alberta Transportation. 2021. Alberta Transportation Feedback on Draft Potential Conditions.	36
N/A	Alberta Transportation and Utilities and Forestry, Lands and Wildlife. 1992. Fish Habitat Protection Guidelines for Stream Crossings. Alberta Energy/Forestry, Lands and Wildlife. Revised February 1992. Pub. No.: T/263. ISBN: 0-86499-883-X. Edmonton, Alberta. 45 pp	45
N/A	Canadian Council of Ministers of the Environment. 2018. Canadian Environmental Quality Guidelines website. http://ceqg-rcqe.ccme.ca/en/index.html	
N/A	Department of Fisheries and Oceans. 2013. Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada. Fisheries and Oceans Canada. DFO Can. Sci. Advis. Sec. Sci. Advis. Rep. 2013/017.	16
N/A	Di Rocco, R. and R. Gervais. 2020. SPOT: Swim Performance Online Tools. Available from http://www.fishprotectiontools.ca/	
N/A	Fernet, D.A. 1983. The Effects of Magnacide H Treatment on the Fish Fauna of the Carseland-Bow Canal. Prepared by Environmental Management Associates for Alberta Environment, Planning Division.	22

N/A	Government of Canada. 2012. Canadian Environmental Assessment Act. S.C. 2012, c 19, s. 52 Current to March 28, 2016. Last amended on December, 2014. Department of Justice. Ottawa, Ontario. 70 pp.	
N/A	Government of Canada. 2019. Species at Risk Act, S.C. 2002, c. 29. Current to August 28, 2019. Department of Justice. Ottawa, Ontario. 106 pp.	
N/A	Katopodis and Gervais. 2016. Fish Swimming Performance Database and Analyses. DFO Can. Sci. Advis. Sec. Res. Doc. 2016/002 vi+550p.	
N/A	Maine Department of Transportation Environmental Office. 2004. Fish Passage Policy and Design Guide. Available at: https://www.fs.fed.us/biology/nsaec/fishxing/fplibrary/MDOT_2004_Fish_Passage_Policy_and_Design_Guide.pdf	22
N/A	Popowich, R. and A. Paul. 2006. Seasonal movement patterns and habitat selection of bull trout (<i>Salvelinus confluentus</i>) in fluvial environments.	128
N/A	Popowich, R. and G. Eisler. 2008. Fluvial Bull Trout Redd Surveys on the Elbow, Sheep and Highwood Rivers, Alberta. Prepared for: Trout Unlimited Canada. Prepared by: Applied Aquatic Research Ltd.	30
N/A	Post, J., B.van Poorten, T. Rhodes, P. Askey, and A. Paul. 2006. Fish entrainment into irrigation canals: an analytical approach and application to the Bow River, Alberta, Canada. North American Journal of Fisheries Management. 26:875-887	13
N/A	Province of Alberta. 2014. Environmental Protection and Enhancement Act. Revised Statutes of Alberta 2000 Chapter E-12. 158 pp.	
N/A	Province of Alberta. 2017. Alberta Wildlife Act. Wildlife Regulation 143/1997. With amendments up to and including Alberta Regulation 93/2017. 320 pp.	
N/A	Richter, B., Davis, M., Apse, C., and C. Konrad. 2012. A presumptive standard for environmental flow protection. River Research and Applications 28: 1312-1321.	10
75	Stantec. 2018a. Springbank Off-Stream Reservoir Project – Environmental Impact Assessment. Volume 4: Appendices, Appendix M. Aquatic Ecology. Attachment 8A Fish Passage Analysis and Technical Data Report. March 2018. Prepared for Alberta Transportation.	198
47	Stantec. 2018b. Springbank Off-Stream Reservoir Project – Environmental Impact Assessment. Volume 3B: Effects Assessment (Flood and Post-Flood Operations). Assessment of Potential Effects on Aquatic Ecology. Prepared for Alberta Transportation March 2018.	32
59	Stantec. 2018c. Springbank Off-Stream Reservoir Project – Environmental Impact Assessment. Volume 3C: Effects Assessment (Cumulative Effects, Follow-up and Monitoring). Preliminary Follow-up and Monitoring Programs. Prepared for Alberta Transportation March 2018.	25

Reviewed but not Referenced

27	AT EIA to NRCB re Vol 3A S06 Hydrology	
29	AT EIA to NRCB re Vol 3A S08 Aquatic Ecology	
58	AT EIA to NRCB re Vol 3C S01 Cumulative Effects	
81	AT EIA to NRCB re Debris Deflector Addendum	
?	AT SIR to NRCB re SIR1 Response Appendix IR25-1 Habitat Mapping	
?	AT SIR to NRCB re SIR1 Response Appendix IR26-1 Fish Passage	
108	AT SIR to NRCB re SIR1 Response Appendix IR35-1	
100	AT SIR to NRCB re SIR1 Response Appendix IR6-1	
118	AT SIR to NRCB re SIR1 Response Appendix IR357-1	
128	AEP SIR to AT re SIR2 Questions NRCB AEP Combined plus Cover Letter-	
	Total	3017