



## **FINAL COST AWARDS DECISION**

NRCB Application No. 1701

Alberta Transportation

Springbank Off-Stream Reservoir Project in  
Springbank, Alberta

August 10, 2021

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## SECTION 1 INTRODUCTION

### 1.1 NRCB Application and Hearing

In November 2017, Alberta Transportation (AT or the applicant) filed its original application with the Natural Resources Conservation Board (Board) requesting approval to construct and operate an off-stream reservoir at Springbank, Alberta, in Rocky View County (the Project or SR1). AT submitted an updated application on March 26, 2018.

On December 2, 2020, the Board held a pre-hearing conference (PHC) in a virtual format to hear representations respecting certain aspects of the hearing to consider the application. These included requests from parties to be considered as interveners eligible to receive intervener funding and advance awards of funding. On December 10, 2020, the Board issued its [Pre-Hearing Conference Decision Report](#), stating that the hearing would commence on March 22, 2021, in a virtual format. The Board recognized certain individuals or groups of individuals who, in the Board's view, were directly affected by the proposed Project and were therefore eligible for intervener funding. Having regard for the proposals of the eligible interveners, the Board directed Alberta Transportation to provide advance funding where the Board deemed it necessary to assist eligible interveners with the preparation of their submissions.

On January 20, 2021, the Stoney Nakoda Nations (SNN) requested to be considered as a directly affected party, eligible to receive intervener funding and an advance award of funding. After a hearing on the SNN's application, held on February 9, 2021, the Board issued its [Decision Report on the Stoney Nakoda Nations' January 20, 2021 Applications](#), recognizing that the SNN was a directly affected party and was therefore eligible for intervener funding. The Board directed Alberta Transportation to provide advance funding to the Stoney Nakoda Nations.

The hearing commenced on March 22, 2021, and adjourned on April 7, 2021, for a total of 10.5 days. On June 22, 2021, the Board issued [Decision Report NR 2021-01](#).

### 1.2 Intervener Funding

Pursuant to the *Natural Resources Conservation Board Act* and regulations, the Board has received requests for final cost awards from those parties (cost claimants) it determined to be directly affected and eligible for intervener costs. This report contains the Board's decisions regarding the final cost awards for all cost claimants who requested funding.

Intervener funding is intended to assist with expert and legal assistance for individuals (or groups of individuals) to enable them to understand an application and test its reasoning and

conclusions with respect to potential direct effects on them. The costs of experts' work conducted on behalf of an intervener normally include reviewing an application, preparing a submission, and participating in the public hearing. The determination of final cost awards is completed after the public hearing decision has been released. The Board has indicated that in any consideration of intervener funding, it expects that the party requesting funding does so to assist in the preparation and presentation of an intervention. In most cases, cost claimants contribute a significant amount of time and effort to voluntarily assist the Board in considering the public interest. In some cases expert assistance is required. The Board has consistently stated that cost claimants may expect to bear a reasonable proportion of the costs of the preparation and presentation of an intervention. Any funding for cost claimants should enable them to provide information that would not otherwise be available to the Board in determining whether the project is in the public interest.

The Board has also stated that, in its view, it is an applicant's responsibility to conduct the studies and research necessary to assemble and present the information needed to determine whether a proposed project is in the public interest. The Board does not believe that interveners should receive funding to conduct parallel studies to that of the applicant or to embark on original data gathering exercises. However, there may be circumstances when the Board determines that certain information that was not provided by the applicant will assist the Board in making its decision. In such a case, the Board would take steps to ensure that such information is brought before it. Because the Board would normally make conservative assumptions in the face of either a lack of reliable information or a significant degree of uncertainty about a matter, the risk in failing to provide adequate information is the applicant's.

In determining whether a final award of costs for a particular item is appropriate, the Board will normally take into account the extent to which that item assisted the Board in reaching its decision. An objective of the Board is that intervener funding, when awarded, should result in a positive contribution to a review and assist the Board in reaching a decision.

The Board has stressed the importance of coordination of efforts among interveners and avoidance of overlap in expert assistance in its Intervener Funding Process Guide, its Springbank Pre-Hearing Conference Decision Report, and its past decisions on final cost awards in other applications. The Board has strongly encouraged interveners with related interests to form groups or coalitions in order to pool resources and make for more effective interventions and more efficient hearings. In the Board's view, attaining this objective can result in substantial cost savings for the Board, the applicant, and interveners.

In terms of legal costs, the Board acknowledges that the nature of legal participation is often less predictable than the role fulfilled by expert witnesses. This is particularly so if the hearing duration is longer than anticipated. Awards should cover legal costs for complex hearings, but

only costs for functions that require legal expertise. Costs for legal assistance that may be recognized would normally include preparing lay and expert witnesses to give evidence, reviewing or assisting in the preparation of any written submissions to ensure they are legally proper, leading evidence, asking questions at the hearing, and dealing with specific legal issues. In general, legal cost awards do not include work done to request the funding. Finally, there is a distinction between what a client instructs their lawyer to do, and the level of participation that may be determined as recoverable in accordance with the intervener funding practice.

Past cost award decisions can provide useful guidance to cost claimants. The Board notes that, in this proceeding, AT and cost claimants provided other useful observations from past Board cost decisions that merit repeating here.

- The NRCB will normally require cost claimants to contribute a significant portion to the cost of their intervention. Costs are not meant to fully indemnify interveners.
- Final cost awards are made having regard to the length of the hearing, the contribution of experts retained by the cost claimants 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.
- Legal assistance is not necessary in all interventions or for all parts of any given intervention. It would be unfair to the applicant to award costs incurred due to the inappropriate use of legal counsel for functions which could have been undertaken in an equally effective and efficient manner by others, such as the executive of the group or association.

The Board does have broad discretion to deny a claim for funding under its Rules of Practice Regulation, section 31(3), in the following circumstances:

- if the Board is not satisfied that the costs were reasonable and directly and necessarily related to the preparation and presentation of the cost claimant's submission;
- if the Board is not satisfied that the cost claimant was in need of legal or technical assistance in the preparation and presentation of the cost claimant's submission;
- if the Board is not satisfied that the intervention was conducted economically;
- if, in the Board's opinion,
  - the intervention and its presentation were unnecessary, irrelevant, improper, or intended to delay the proceedings with respect to an application; or
  - the claim is excessive, having regard to the nature of the application and the intervention; or
- for any other reason the Board considers appropriate.

## SECTION 2 REQUESTS FOR FINAL COSTS

Requests for final costs were received by the Board from the Stoney Nakoda Nations (SNN), the SR1 Concerned Landowners Group (SCLG), and the Calgary River Communities Action Group (CRCAG). A summary of the final cost requests can be found at section 6 of this decision. Particulars can be found in submissions from these cost claimants in the Springbank project documents section of the NRCB website (<https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing/83/springbank-off-stream-reservoir-project>).

## SECTION 3 VIEWS OF ALBERTA TRANSPORTATION

Alberta Transportation submitted that cost awards for expert fees and disbursements should be limited to the amounts approved by the Board in its ruling on advance funding. Alberta Transportation stated that significant expert fees were submitted related to activities not supported by the Board's rules for intervener funding. In summary, reasons provided by AT for limiting and/or reducing costs claimed by experts included:

- Many of the experts retained provided minimal contribution to an understanding of issues at the hearing.
- Experts spent significant time preparing cross-examination for legal counsel and monitoring the hearing during topic blocks outside of their expert scope of knowledge.
- Expert fees include significant time related to reviewing transcripts and preparing the final argument.

The AT response to cost claims of the SR1 Concerned Landowners Group and the Stoney Nakoda Nations is contained in its May 21, 2021 submission to the Board that can be viewed on the NRCB website (<https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing/83/springbank-off-stream-reservoir-project/documents/11174/20210521-at-corr-to-nrcb-re-final-costs-claim-response>). AT did not respond to CRCAG's costs claim.

AT also requested that the Board assess the extent to which each expert contributed to a better understanding of issues that were relevant and important to the review of the Project. AT asserted that expert fees should be reduced where the expert:

- failed to establish potential impacts that would arise from the Project outside the PDA;
- attempted, but failed, to challenge or disprove Alberta Transportation's modelling that demonstrated that any potential impacts would not extend beyond the PDA, would be short lived, and would be reversible;
- recommended mitigation measures that AT had already committed to implement;

- lacked the appropriate expertise to comment on the issues on which they presented evidence;
- went beyond reviewing and critiquing AT’s evidence and advocated for a particular result, as opposed to acting as an objective and independent expert witness;
- did not provide an independent written report to the Board;
- performed a superficial assessment in preparing their evidence; and
- provided materials that were revealed to be fundamentally inaccurate.

AT also submitted that legal fees exceeded the amounts recognized by the Board in its decision on advance funding without explanation for the increase. AT submitted that:

- the actual hearing time closely corresponded to anticipated/scheduled hearing time;
- legal costs related to funding requests, work done before the certainty of a hearing, and work done after the close of a hearing, are not normally paid by an applicant;
- there was extensive cross-examination on issues outside the scope of the Project;
- there was a question whether time claimed by legal counsel for consulting with witnesses in preparation for closing argument is excessive, given that final argument was oral; and
- there was a question about legal fees for work that constituted duplication and overlap of time.

## SECTION 4 VIEWS OF THE COST CLAIMANTS

### 4.1 Stoney Nakoda Nations

The SNN submitted that attendance of legal counsel at the hearing was claimed at six hours per day. They corrected an error in costs associated with their claim. The SNN also submitted that their experts spoke to areas that nobody else was qualified to address.

### 4.2 SR1 Concerned Landowners Group

The SCLG submitted that many other Board decisions that AT referred to had been private company proponents, but this Project involves expropriation of land by the government.

The SCLG noted that McLean Creek (MC1) had been identified as a hearing topic in the pre-hearing conference, so it was reasonable for them to have spent time and resources on MC1.

Several of the SCLG's experts noted that the amount claimed as final costs were close to what they had originally sought for advance costs. Some of the SCLG's experts had underestimated the amount of work necessary and the volume of documentation to review. For example, Mr. Locke ended up reviewing 3,000 pages, rather than the 50 he had forecast. Also, the final preliminary design report was not submitted by AT until after the pre-hearing conference (December 2020).

The SCLG pointed out that steps taken before the pre-hearing conference related to items other than just intervener funding requests.

In respect of the claim for legal costs, the SCLG submitted that there was no overlapping attendance, as one lawyer attended while the other used their time on other things.

### 4.3 Calgary River Communities Action Group

CRCAG drew the Board's attention to hundreds of hours contributed by volunteers. CRCAG submitted they only used legal counsel for specialized legal assistance. CRCAG did not retain counsel until summer 2020, and counsel involvement leading up to the pre-hearing conference was minimal.

## SECTION 5 VIEWS OF THE BOARD

In its review of the intervener cost requests and AT's response, the Board considered its framework outlined in section 1 above and makes the following general observations:

- a) The Board expected the hearing to run 10 days and requested an additional five days be set aside should it be necessary to extend the hearing. The hearing occupied 10 days with an additional half day to accommodate Alberta Transportation's final argument. Hearing days generally started at 8:30 am and closed at 5:00 pm.
- b) Hearing topic areas and time allotments for each party were decided in collaboration with all parties and distributed ahead of the hearing. In general, parties received the time allotments they requested.
- c) The Board appreciates that parties generally respected the agreed to time allotments for most topic areas. However, it wasn't clear to the Board that the full time allotments for all topic areas were used as efficiently as they could have been by the parties.
- d) In its December 10, 2020 Pre-Hearing Conference Decision Report, the Board made it clear that the only reviewable project under consideration was the SR1 application. The Board was aware that alternatives, namely MC1 and projects on the Bow River, remained a focus and area of concern for the SCLG and SNN respectively. The Board was open to some discussion on alternatives but made it clear in its PHC report that the topic of alternatives did not warrant significant time at the hearing. The Board agrees



with Alberta Transportation that hearing time could have been reduced if interveners had spent a more appropriate amount of time (i.e., less) on alternatives.

- e) The Board is not in agreement with Alberta Transportation's assertion that expert fees should be awarded, in part, based on whether the evidence disproved AT modeling that demonstrated potential impacts would not extend beyond the PDA, would be short lived, and would be reversible. It is not appropriate that funding be fully linked to whether third party review reveals errors or disproves proponent evidence. To link funding in this manner would essentially handcuff interveners.
- f) While the Board's past practice has not allowed cost awards for work completed prior to the notice of hearing, the Board has never ruled out such a possibility. In this case, the notice and agenda for the Pre-hearing Conference (letter dated September 23, 2020 with official notice on October 5, 2020) should have been sufficient for parties to conclude that a hearing would be scheduled. Further, in the case of the SCLG, the Board appreciates the amount of work devoted to bringing together and representing a directly affected party with a large membership. The Board acknowledges that representation of such a large stakeholder group as the SCLG does lend itself to time savings and a more efficient hearing process. The Board's cost decision below reflects this finding.
- g) The Board does not accept the SCLG's assertion that the NRCB should fully indemnify the SCLG for costs incurred, as the group includes persons who own land that may be subject to expropriation proceedings. Expropriation matters, including costs related to expropriation proceedings, are set out in the *Expropriation Act* [RSA 2000 Ch. E-13].
- h) The Board is in agreement with Alberta Transportation on a number of issues, namely:
  - The Board supports the use of legal counsel by interveners and has outlined its expectations for legal counsel in section 1 above. The Board does agree with AT that fees associated with interveners' legal counsel warrant close scrutiny and in some cases significant reductions.
  - In some cases, expert attendance time at the hearing was excessive for their area of expertise.
  - Some experts did not provide sufficient review and/or documentation of their respective topic area and subsequently did not always significantly improve the Board's understanding of potential Project effects.
  - Some experts advocated or reached beyond their specific area of expertise.
- i) In some cases, the Board makes its cost decision without the benefit of cost claimants providing sufficient (or any) rationale or reasons for their claims. In particular, the Board struggled with the absence of reasons provided in those cases where interveners submitted claims that were significantly greater than the budgeted awards outlined in its December 10, 2020 Pre-Hearing Conference Decision Report.

- j) The Board has typically been reluctant to award intervener costs to parties not adverse to the application. In this case, it is clear that CRCAG has a direct interest in the approval and construction of the Project in order to protect their property and safety.

## SECTION 6 BOARD DECISION

Participant	Advance Cost Request (GST included)	Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)	Advance Cost – Award	Final Cost Request (May 7, 2021)	Board Cost Award (total before subtracting advance award) <sup>1</sup>
<b>SR1 Concerned Landowners Group Claim</b>					
<b>Austin Engineering</b>	\$111,459	\$55,187	\$27,594	\$ 95,131	<b>\$80,000</b>
<p>Austin Engineering provided a detailed review of dam design and safety information. While not experts in Alberta dam construction, they clearly are experts in the field of dam design. The Board recognizes the extensive amount of material reviewed by Austin Engineering and the constructive assessment of AT’s dam design and operating parameters. The Board’s understanding of this topic area benefited from Austin’s assessment, direct evidence, and answers provided through cross examination.</p> <p>While the work was valuable to the Board, it is unclear to the Board why the original budget was exceeded by approximately \$40,000. The Board recognizes that additional dam design information was made available late in the process, and Austin provided valuable critique on the 24 recommendations it felt needed to be addressed. The Board also finds that the additional work was conducted outside of the scope approved, namely sections 2.05 and 2.06 of Austin’s proposal costing \$17,230, and was not required as indicated in the Board’s PHC report of December 10, 2020. For these reasons the Board is willing to increase the award from the originally approved \$55,187 to \$80,000.</p>					

<sup>1</sup> The Board has rounded various calculations where appropriate.

<b>Participant</b>	<b>Advance Cost Request (GST included)</b>	<b>Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)</b>	<b>Advance Cost – Award</b>	<b>Final Cost Request (May 7, 2021)</b>	<b>Board Cost Award (total before subtracting advance award)<sup>1</sup></b>
<b>Dr. Fennell</b>	\$22,050	\$18,360	\$ 9,180	\$ 32,886	<b>\$25,623</b>

The Board recognizes Dr. Fennell’s expertise in groundwater assessment. While AT argues that hydrology and climate change are not Dr. Fennell’s direct expertise, his experience in working with experts in these areas and relating that work to groundwater interactions is reasonable. Further, in its PHC request for intervener funding, the SCLG did indicate that Dr. Fennell would assess hydrology and climate change in his submission. The Board took no exception to this approach in its December 10, 2020 PHC report.

The Board found that Dr. Fennell’s assessment of groundwater was useful in its review of the Project. While appreciated by the Board, portions of Dr. Fennell’s testimony relating to climate change, geotechnical issues, and the use of historical flood information for determining the design flood were somewhat less useful to advancing critical assessment of the Project. The Board is prepared to award 50 per cent of the difference between the budgeted and final cost request (\$7,263).

<b>Mr. Wallis</b>	\$30,901	\$19,710	\$ 9,855	\$ 32,248	<b>\$21,870</b>
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Mr. Wallis’s evidence was credible and he demonstrated strong knowledge, in particular, regarding natural stream flow ecosystems.

Given the nature of the Project, biodiversity, while important, was not a substantive issue in the Board’s decision. Also, the Board questions the need for Mr. Wallis’ fee representing 42.25 hours of attendance at the hearing. Mr. Wallis originally forecast eight hours for hearing preparation and attendance, and the Board awards an additional eight hours given the complexity of biodiversity touching on other topic areas. The Board awards the original budgeted amount of \$19,710 plus eight hours additional hearing time at \$270/hr (\$2,160), totalling \$21,870.

<b>Participant</b>	<b>Advance Cost Request (GST included)</b>	<b>Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)</b>	<b>Advance Cost – Award</b>	<b>Final Cost Request (May 7, 2021)</b>	<b>Board Cost Award (total before subtracting advance award)<sup>1</sup></b>
<b>Dr. Zelt</b>	\$12,600	\$12,000	\$ 6,000	\$ 12,600	<b>\$12,600</b>
<p>Air quality was a key issue for interveners and the Board. Dr. Zelt found a key error in the AT air quality modeling which was later corrected by AT. The Board benefitted from further analysis and the cross examination in this topic area. Dr. Zelt’s final cost claim is reasonable and closely reflects the original budget.</p>					
<b>Dr. Osko</b>	\$36,540	\$15,000	\$ 7,500	\$ 24,798	<b>\$15,000</b>
<p>The Board recognizes the need for weed management in response to Project effects. Alberta Transportation submitted a weed management plan in its application. The Board did not find weed control a central issue in making its decision. Dr. Osko’s submission and cross examination did not significantly further the Board’s understanding in this topic area. As such, the Board is not prepared to award costs above the original budget of \$15,000.</p>					
<b>Mr. Locke</b>	\$19,845	\$18,900	\$ 9,450	\$ 34,728	<b>\$28,113</b>
<p>The aquatics topic area was an important issue at the hearing. Mr. Locke’s analysis and evidence provided under cross examination was helpful to furthering the Board’s understanding of Project effects on the aquatic ecology. Mr. Locke’s confirmation of AT’s overall approach was valuable in the Board’s decision. The Board recognizes that some information in the aquatics area (e.g., summer 2020 field aquatic data) was submitted relatively later in the review process, which may have increased Mr. Locke’s review time.</p> <p>The Board does question the need for Mr. Locke to have attended 40.5 hours of the hearing. The Board finds it reasonable that Mr. Locke would be required for 16 hours of the hearing, and therefore reduces his cost claim by \$6,615 (24.5 hrs at \$270/hr) to \$28,113</p>					
<b>Sub-total: Experts/Consultants</b>	\$233,395	\$139,157	\$69,579	\$232,391	<b>\$183,206</b>

Participant	Advance Cost Request (GST included)	Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)	Advance Cost – Award	Final Cost Request (May 7, 2021)	Board Cost Award (Total before subtracting advance award)
<b>Legal Counsel</b> (Secord/Okoye/Bonnell)	\$214,882	\$161,200	\$80,200	\$282,052	<b>\$180,210</b>

In its December 10, 2020 PHC report, the Board approved a budget of \$161,200 for the SCLG’s legal fees. The Board notes that the SCLG’s request for legal counsel fees was extensive but reasonable given the size of the intervener group, the complexity and size of the application, and estimated hearing time. The Board was surprised by the significant increase in the final cost claim for legal fees.

**1. Participation at the Hearing**

The SCLG proposed, and the Board agreed, that having one senior lawyer attend the entire hearing was appropriate. The SCLG estimate for hearing attendance appeared to anticipate that each senior lawyer would attend half the hearing: 40 hours (for each lawyer) based on a 10 day, eight hour/day hearing. The Board notes that the hearing ran for 10.5 days, approximately eight hours/day. The final cost claim indicates that Mr. Secord and Ms. Okoye’s hearing attendance was 167.7 and 150.6 hours respectively, representing nearly a four-fold increase over the hours originally requested by the SCLG. The SCLG submitted that this was not strictly duplicative and each lawyer spent their time well. The Board is unconvinced that the significant increase in time was reflected in improved efficiencies with respect to hearing submissions or cross examination. There were a number of instances where cross examination could have been more efficient and effective, especially given the number of hours devoted during the hearing by two senior lawyers.

While the Board accepts that full hearing attendance by two senior lawyers is somewhat unusual, it is not unique. Furthermore, the Board acknowledges that there was likely more work than the SCLG predicted to prepare submissions and cross examination during the hearing, but the four-fold increase was unexpected, and the detailed invoices appear to include duplication or redundant work. The Board is unconvinced that the requested 320 hours for hearing attendance by two senior lawyers combined is justified.

The Board is prepared to award 90 hours of hearing attendance to each senior lawyer. The claim is reduced as follows:

Mr. Secord:

From: 160.7 hrs x \$350/hr = \$56,245

To: 90 hrs x \$350/hr = \$31,500

Ms. Okoye:

From: 150.6 hrs x \$320/hr = \$48,192

To: 90 hrs x \$320/hr = \$28,800

Total reduction in the requested claim for hearing attendance = \$44,137

Participant	Advance Cost Request (GST included)	Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)	Advance Cost – Award	Final Cost Request (May 7, 2021)	Board Cost Award (Total before subtracting advance award)
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**2. Preparation of Submissions**

According to the SCLG, the total hours used by legal counsel in preparing its submission is 494.5. Given an eight hour work day, Mr. Secord’s 232.8 hours, Ms. Okoye’s 230.2 hours, and Ms. Bonnell’s 31.5 hours translates to approximately 62 full-time equivalent days.

The Board notes that the SCLG’s December 2020 advance cost request included 320 hours for preparation of submissions. The Board acknowledges that significant work was required to review transcripts, assist landowners with their submissions, and prepare hearing arguments. The Board appreciates that the SCLG covered most topics, and accepts that more time than originally forecast was necessary for these tasks; however, the Board is not prepared to award the entire 494.5 hours claimed. It is not clear that legal counsel was required to perform many of the tasks during this time. The Board is prepared to award 50 per cent of the increase in time devoted to preparation of submissions. The cost claim for time allotted to submissions will be reduced accordingly.

494.5 hrs final cost request – 320 hrs originally requested = 174.5 hrs  
 174.5 hrs x 50% = 87.25 hrs x \$335/hr = \$29,230 (based on approximate \$335/hr blended rate)

Total reduction of claim for preparation of submissions = \$29,230

**3. Work Completed Prior to Issuance of Pre-Hearing Conference Decision Report (December 10, 2020)**

The Board acknowledges the benefit of the SCLG’s intervention representing many individuals directly affected by the SR1 application. For that reason, the Board is prepared to award 50 per cent of the legal work conducted prior to the December 10, 2020 Pre-Hearing Conference Decision Report, which set the date for the hearing. However, the Board is not prepared to award costs incurred prior to the September 23, 2020 correspondence regarding the Pre-hearing Conference, at which point a hearing was all but certain. As such, the following adjustments will be made to the SCLG’s final cost claim (based on approximate \$335/hr blended rate):

Prior to Sept 23, 2020 NRCB Notice	21 hrs reduced by 100% = 21 hrs @\$335/hr	= \$ 7,035
Sept 23 – Dec 2, 2020	105.5 hrs reduced by 50% = 52.75 hrs @\$335/hr	= \$17,671
Dec 2 – Dec 10, 2020 (PHC report)	22.5 hrs reduced by 50% = 11.25 hrs @\$335/hr	= \$ 3,769
Total reduction for work completed prior to PHC report		= \$28,475

Participant	Advance Cost Request (GST included)	Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)	Advance Cost – Award	Final Cost Request (May 7, 2021)	Board Cost Award (Total before subtracting advance award)
<p>Summary of adjustments (reductions) to the SCLG final cost claim for legal fees:</p> <p>1. Participation at the hearing \$ 44,137</p> <p>2. Preparation of submissions \$ 29,230</p> <p>3. Work completed prior to December 10, 2020 \$ 28,475</p> <p>Total reduction to cost claim for legal fees = \$101,842</p>					
<b>Honoraria</b>					
Karin Hunter				\$3,250	<b>\$3,250</b>
Ian Dowsett				\$ 150	<b>\$ 150</b>
<b>Total SCLG Claim</b>	<b>\$448,277</b>	<b>\$300,357</b>	<b>\$149,779</b>	<b>\$517,843</b>	<b>\$366,816</b>



<b>Participant</b>	<b>Advance Cost Request (GST included)</b>	<b>Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)</b>	<b>Advance Cost – Award</b>	<b>Final Cost Request (May 7, 2021)</b>	<b>Board Cost Award (Total before subtracting advance award)</b>
<b>Stoney Nakoda Nations (SNN) Claim</b>					
<b>Elders</b> Snow and Ear				\$1,100	<b>\$1,100</b>
<b>Elders</b> Snow and Goodstoney				\$1,100	<b>\$1,100</b>
<b>Elders</b> Snow and Labelle				\$1,000	<b>\$1,000</b>
<b>Witnesses</b> (Wesley, Holloway, Snow Jr., Daniels Jr., Goodstoney)				\$2,250	<b>\$2,250</b>
<b>Experts/Consultants</b> (Berry, Temoin, Slater, PGL Consultants, MNP)				\$31,335	<b>\$23,501</b>
<b>Subtotal</b>				\$36,785	<b>\$28,951</b>
<p>The Board finds that it relied most heavily on testimony provided by the Elders and Mr. Snow and Mr. Goodstoney. That is not to say that the Board did not rely on the evidence and testimony provided by the SNN’s experts; it did. However, the Board is in agreement with Alberta Transportation’s assessment of the SNN’s expert evidence on a number of points. In particular, some experts relied entirely on desktop reviews to prepare their submission, and in some cases relied on evidence provided at regulatory hearings for other projects that was not relevant to this proceeding.</p> <p>The Board is prepared to award 75 per cent of the cost claim for expert evidence and participation at the hearing. (\$31,335 x 75% = \$23,501)</p>					
<b>Legal Counsel</b> (Rae, Loudon)		\$62,400	\$31,200	\$72,690	<b>\$62,400</b>

Participant	Advance Cost Request (GST included)	Advance Cost - Approved Budget (Dec 10, 2020 or Feb 4, 2021)	Advance Cost – Award	Final Cost Request (May 7, 2021)	Board Cost Award (Total before subtracting advance award)
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Mr. Rae submitted that SNN legal counsel attendance at the hearing (six hours/day) is reasonable, and the Board agrees. The Board further finds that the SNN, for the most part, were efficient in presenting its direct evidence and in conducting its cross examination. The Board finds, however, that the SNN devoted an inappropriate amount of time on flood mitigation alternatives on the Bow River. The Board made it clear that the only reviewable project in front of the proceeding was the SR1 application. The Board awards the original budgeted amount for legal fees, \$62,400.

<b>Total SNN Claim</b>		<b>\$62,400</b>	<b>\$31,200</b>	<b>\$109,475</b>	<b>\$91,351</b>
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**Calgary River Communities Action Group Claim**

<b>Interveners</b> (Brenda Leeds Binder and Tony Morris)	0	0	0	\$ 1,100	\$1,100
<b>Legal Counsel</b> (Cusano, Bruni)	0	0	0	\$57,718	\$52,006

While they didn't submit a request for advance funding, CRCAG is eligible for intervener funding. Calgary residents and business who were affected by the 2013 Elbow River flooding have a direct interest in the Project being constructed. Without flood control on the Elbow River, those affected by flooding events on the Elbow would continue to be unprotected from future flood events. CRCAG was able to provide a perspective that AT could not.

The Board notes that Alberta Transportation did not respond to CRCAG's cost claim. The Board has previously stated that interveners are expected to bear some portion of the intervention costs; in particular, those costs associated with work prior to the hearing. As with the SCLG, the Board recognizes the benefit of and challenges associated with interventions that represent large groups of directly affected people. The Board is prepared to award 50 per cent of the work conducted prior to the December 10, 2020 PHC report. However, the Board is not prepared to award costs incurred prior to the September 23, 2020 letter. As such the following reductions will be made to CRCAG's final cost claim:

July 16, 2020 – Sept 23, 2020 2.4 hrs reduced by 100% @\$350/hr (Cusano) = \$ 840  
 Sept 23, 2020 – Dec 10, 2020 14.3 hrs reduced by 50% = 7.2 hrs @\$350/hr (Cusano) = \$2,520  
 Sept 23, 2020 – Dec 10, 2020 16.9 hrs reduced by 50% = 8.4 hrs @\$280/hr (Bruni) = \$2,352

Total reduction for legal work completed prior to PHC report = \$5,712

Total legal cost award to CRCAG \$57,718 - \$5,712 = \$52,006  
 Total honoraria cost award to CRCAG = \$ 1,100

<b>Total CRCAG Claim</b>				<b>\$58,818</b>	<b>\$53,106</b>
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<b>TOTAL – All Claims</b>	<b>\$448,227</b>	<b>\$362,757</b>	<b>\$180,979</b>	<b>\$686,136</b>	<b>\$511,273</b>
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DATED at EDMONTON, ALBERTA, this 10<sup>th</sup> day of August, 2021.

*Original signed by:*

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Peter Woloshyn, Chair

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Sandi Roberts

\_\_\_\_\_  
Walter Ceroici

\_\_\_\_\_  
Daniel Heaney

Contact the Natural Resources Conservation Board at the following offices:  
Dial 310-0000 to be connected toll free.

**Edmonton Office**

4th Floor, Sterling Place, 9940 - 106 Street  
Edmonton, AB T5K 2N2  
T 780-422-1977

**Calgary Office**

19th Floor, Centennial Place, 250 - 5 Street SW  
Calgary, AB T2P 0R4  
T 403-297-8269

[info@nrcb.ca](mailto:info@nrcb.ca)  
[www.nrcb.ca](http://www.nrcb.ca)

Copies of NRCB process guides are available by  
contacting the NRCB.

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