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File No. 1184-009

Attention: Jennifer Howe, Project Manager, Prairie and Northern Region

Re: Comments on draft EA Report and potential conditions

Our firm is legal counsel to Blood Tribe/Kainai (“**Kainai**”) for the proposed Springbank Off-Stream Reservoir Project (the “**Project**”). We write to provide comments on the draft Environmental Assessment Report (the “**draft EA Report**”) and potential conditions published by the Impact Assessment Agency of Canada (the “**Agency**”) on January 4, 2021. Kainai appreciates the Agency extending the timeline to provide these comments.

Prior to engaging directly with the draft EA Report and potential conditions, Kainai wishes to reiterate what has been said throughout the regulatory process: the Project will directly and adversely affect the exercise of Aboriginal and Treaty rights by Kainai members and without appropriate Crown conditions, this Project will have adverse effects on Kainai’s Treaty 7 rights. We provide these submissions in the hope that the draft conditions in the report be made more responsive to the needs of Kainai and its members. Kainai and the Crown have a mutual interest in ensuring that development of land and resources is done in a way that enhances Kainai’s way of life and promotes reconciliation.

The submission is organized into four sections:

1. Executive Summary
2. Summary of Project impacts to Kainai rights
3. General concerns with draft EA Report and potential conditions
4. Recommended changes to draft potential conditions

We look forward to discussing these concerns in greater detail through future engagement sessions with the Agency.

1. Executive Summary

The Project is located on Kainai's traditional territory. Kainai has a special relationship and connection with the Project area and currently access the area for hunting, fishing, harvesting plants, and for ceremonial purposes. In addition, the Project area contains many important historical resources and sites of significance to the Blackfoot, and Kainai in particular. As a result, there are impacts to Kainai's Aboriginal and Treaty rights through the loss of land for traditional use, and through potential loss and permanent alteration of historical resources and sites of significance.

Although the mitigation measures and the draft conditions mitigate some impacts to Kainai's Aboriginal and Treaty rights, some impacts remain and some are unavoidable for a Project that has the potential to flood a vast area.

The submission below provides a review of the Project's impact on Kainai, identifies how language and conditions could be improved, and notes the relationship between this Project and the cumulative loss of areas for Kainai to practice their rights throughout Alberta.

In short, Kainai requests that the Agency:

- bind the Proponent to provide meaningful and comprehensive consultation on areas of key importance to Kainai;

- provide greater clarity on what is required to implement the Land Use Advisory Committee and Land Use Plan in a meaningful way;
- recognize that this Project will have unavoidable impacts on Blackfoot historical resources and sites of significance; and
- make adjustments to the conditions as recommended.

2. Summary of Project impacts to Kainai rights

Kainai has a special relationship and connection with the Project area

Kainai is part of the Blackfoot Confederacy located in southern Alberta. The traditional Blackfoot territory “extends from the Rocky Mountains to the West; to the Sand Hills to the East; to the North Saskatchewan River in the North, and the Yellowstone in the South”.¹ Kainai, and their Blackfoot forbearers, can trace their history at least back to the “Old Women’s phase of archaeological time – about 850 AD to the 1700[s] AD”.²

The Blackfoot, in addition to being among the longest established Indigenous groups that still live in southern Alberta,³ continue the practice of their culture and traditions today. The Blackfoot Gallery Committee summarizes this history as:

Our story is also about our struggle to maintain our values, principles and beliefs in the face of relentless change. For centuries we were a strong, independent people. Then whisky and disease began to destroy us. The buffalo, the mainstay of our existence, disappeared from our land. The governments of Canada and the United States promised to help. In return they forced us to live on reserves, to give up our ancient beliefs and to stop speaking our own language. The governments thought we would either die off or be assimilated. We have survived. Much has changed in our culture,

¹ D. O'Connor, “Blood Tribe/Kainai Traditional Knowledge, Land, and Resource Use Study: Springbank Off-Stream Reservoir Project” (June 2018) p 1, PDF p 9 [TKU Report].

² TKU Report, p 4, PDF p 12.

³ TKU Report, p 4, PDF p 12.

and many young people have difficulty learning our language. But the core values of our culture are still important to us. Our ceremonies continue to affirm our connection with all of the natural world.⁴

Today, the elk hunt, the beaver hunt, traditional commerce and trade, the gathering of native plant species (for subsistence, medicinal, and ceremonial use), the use of plants and timber (for arts, crafts, fuel, and construction), and the harvesting of several wild game species (for subsistence, cultural, and spiritual purposes) define the culture and traditions practiced today.

The Project rests within this traditional territory of Kainai and within the core area that community members have visited for generations and continue to visit today. In particular, the Proponent proposes to construct an off-stream reservoir to divert and retain a portion of the Elbow River – a river of significant importance to Blackfoot traditions and culture.⁵ Further, the Project Development Area is “part of a historical Blackfoot seasonal travel route between the Bow River and the Milk River”.⁶

The TKU Report prepared for this project recognized several sites of current use for ceremonial, spiritual, cultural, educational value or site that contain unique characteristics of interest. These include:

1. Blackfoot Trail (North-South Trail) along the Elbow River;
2. ceremonial site at winter camp along the Blackfoot Trail;
3. traditional Blackfoot Winter Camps in shaded valleys near water, such as one within the Project area east of the Our Lady of Peace Mission Site;
4. Elbow River Valley;
5. Blackfoot winter camp and sites of historic, cultural and spiritual interest near proposed reservoir outlet on “Un-named Creek” (or Val Vista Creek);

⁴ TKU Report, p 9, PDF p 17.

⁵ TKU Report, p 3, PDF p 11.

⁶ TKU Report, p 11, PDF p 19.

6. wetlands (Tall Grass Lakes) as nesting grounds and migratory bird habitat; and
7. natural spring features.

In addition to these sites of value, the material culture of the Blackfoot peoples exists in many places within the Project area. These include: tipi rings, pre-contact camps, cabin remains, portions of old Blackfoot trails, fire-broken rocks, and medicine wheels.⁷ Although these are *historical* sites, they represent important spiritual sites that reinforce the connection to the lands integral to the continuation of the Blackfoot people.

Kainai currently accesses the area for traditional uses

As much of the Project area has been privately-owned since the 1880s, Kainai must access the lands through agreements with the landowners who occupy heritage ranchlands west of Calgary (the “Springbank Landowners”). Their lands include ideal habitat for moose, elk, deer, and other animals, fish, and plant resources that are the subject of Treaty harvesting rights. The Project area remains a place of high traditional use potential for the Blackfoot Confederacy and Kainai in particular.

For example, as stated by David Striped Wolf when interviewed for the TKU Report:

The landscape is Isstsikomm (coulee or ravine) there is plenty of trees, Akiitoyis (aspen tree), and ponoka (elk), and their calves, white tail deer, black bears, wolves, and many varieties of bird species. I have seen and heard magpie, crows, and hares. There are many species of plants and trees, shrubs, and brush that grow lavishly across the landscape. This is the animal’s natural habitat. They live among the willows and sleep on the willows.⁸

As a result, Kainai accesses the Project area regularly for a variety of traditional uses, as summarized below.

⁷ Please see TKU Report, Figure 4 at PDF p 85 for a map of sites of spiritual, culture, or historical significance and pp 79-81, PDF pp 87-89 for coordinates of Blackfoot cultural properties located in the Project area as identified by David Striped Wolf, Ray Black Plume, Wilton Good Striker, and JJ Shade.

⁸ TKU Report, p 59, PDF p 67.

Hunting

As noted above, Kainai arranges access to the Project area through informal agreements with the Springbank Landowners. For example, in March of 2018 two Kainai hunters accessed the Project area for one day, scouting the area for several hours, and spotting deer and moose. The pair did not elect to take down the moose that day stating:

What we did see early in the morning was a moose and then also at the end of the day we saw another two moose. The only reason that we didn't go after the last two is just because it was quite a ways for us to go in. If we had shot even one it would have been a lot of work for two of us. So it would have been nicer if we would have had at least all six present.⁹

This above quotation refers to the normal practice of Kainai hunters – hunting in large groups of four to six people to ensure they are able to process and pack out the meat after a kill.

The TKU Report found that the landscape leading down to the Elbow River is critical habitat for many species of game that Kainai members hunt for subsistence and ceremonial purposes. Interviews and field visits conducted in the preparation of the TKU Report found the northwestern portion of the Project area to be high quality habitat for elk and white tailed deer.

Elder David Striped Wolfe stated, in relation to the northern portion of the Project area along Highway 22:

I also saw a herd of elk, and it is the breeding ground for deer, bear, and moose and this is their habitat. It is their home and a lot of shelter, and different berries, and fish and beavers that I have seen today and they all

⁹ TKU Report, p 60, PDF p 68.

live on the land and will be affected by the construction of the dam project.¹⁰

On field visits throughout the Project area, Kainai hunters observed:

- signs of elk along the existing flood plain of the Elbow River, in an area described by Elders as high quality habitat for elk and white-tailed deer; and
- signs of moose along the western edge of the PDA where the ground slopes down to the river.

Included as Figure 2, PDF p 74 of the TKU Report is a map of Kainai's Hunting and Wildlife Habitat.

Fishing

Interviews suggest that fishers currently use the portions of the Project area that intersect with the Elbow River to fish for trout and rocky mountain whitefish. An interviewee stated, in reference to the Project area along the Elbow River:

I've fished that river up and down, right at the bridge. All the way up and down ... And like all along the bridge, right from the bridge north and south. And then up in this area here as well.¹¹

Please see TKU Report, Figure 3 at PDF p 81 for a map of the area used by Kainai for fishing.

¹⁰ TKU Report, p 61, PDF p 69.

¹¹ TKU Report, p 67, PDF p 75.

Plant Harvesting

In addition to hunting and fishing, there is significant plant harvesting that occurs in the Project Area. David Striped Wolf described the area as follows:

There are many species of trees and shrubs; I have identified the rabbit willow, choke cherry, bull berry, Saskatoon berry, and many other species of shrubs and trees that are in this area. There are that many choke cherry shrubs that are growing in the area, I see gooseberries, a medicinal plant that cannot be translated into English grows in abundance on the site and is used by Káínai First Nations. I have also identified sage both species and other medicinal plants that are only know to Káínai and cannot be translated into English ...¹²

Please see TKU Report Figure 3, at PDF p 81 for a map of the area used by Kainai for plant harvesting.

The Project will impact Kainai's Aboriginal and Treaty rights

The above information highlights the considerable use in the area by Kainai members for the practice of Aboriginal and Treaty rights.

The Agency concluded that the "Project is likely to cause changes to the exercise of rights" including "low severity of impacts on the right to hunt, trap, and fish, and low to moderate in severity on the right to cultural practice".¹³

Without strictly enforced mitigation measures that preserve access for Kainai members to the Project area and reduce adverse effects on wildlife, fish, and plant and their respective habitats, Kainai concludes the Project will have an adverse impact on their Aboriginal and Treaty rights.

¹² TKU Report, p 76, PDF p 84.

¹³ Draft EA Report, p 144.

3. General concerns with draft EA Report and potential conditions

Throughout the environmental assessment for the Project, Kainai has raised concerns related to Impacts to Rights; Indigenous Peoples' Current Use of Lands, Cultural Heritage, and Sites of Significance; and Cumulative Effects. The comments below reflect Kainai's outstanding concerns with regard to the draft EA Report and potential conditions.

Impacts to Rights

The Agency concluded that the "Project is likely to cause changes to the exercise of rights" including "low severity of impacts on the right to hunt, trap, and fish, and low to moderate in severity on the right to cultural practice".¹⁴ However, the Agency concluded that "taking into account mitigation and follow-up program measures to be included as conditions of approval ... the potential impacts of the Project on Aboriginal or Treaty rights would be appropriately mitigated".¹⁵

Kainai does not agree with this conclusion. In particular, Kainai does not agree that the impacts to Aboriginal and Treaty rights are effectively mitigated by the mitigation measures.

The Agency acknowledges "the Project would compound existing cumulative impacts to land rights"¹⁶ and that the Project will have an impact on cultural practice (albeit at a low to moderate level).¹⁷ However, the Agency references the Land Use Plan and the Indigenous Land Use Advisory Committee ("**Land Use Advisory Committee**") as key mitigation measures that would help resolve these issues. As noted in various communications with both the Agency and the Proponent, Kainai seeks more clarity on the implementation of the Land Use Plan and the operation of the Land Use Advisory Committee.

¹⁴ Draft EA Report, p 144.

¹⁵ Draft EA Report, p 144.

¹⁶ Draft EA Report, p 143.

¹⁷ Draft EA Report, p 143.

The mitigation measures and related conditions do not sufficiently alleviate Kainai's concerns about residual effects on Kainai's Aboriginal and Treaty rights. Recommendations for how to remedy this issue are included in the below section titled Need for clarity on Land Use Advisory Committee.

Indigenous Peoples' Current Use of Lands, Cultural Heritage, and Sites of Significance

Access for current use

The Agency found that during construction and dry operations, the "Project's residual effects on access for current use is low in magnitude and localised within the PDA after taking into account the implementation of a Land Use Plan and other key mitigation and follow-up measures ...".¹⁸ The Agency also found that during flood and post-flood recovery periods, "residual effects on access for current use in the PDA would be localised, high in magnitude, and long-term until access in the Land Use Area can safely resume."¹⁹ The Agency also noted that "residual effects would be infrequent given that the likelihood of a 1:100 year and design flood event is low".²⁰ The Agency goes on to discuss the "critical" role of the Land Use Advisory Committee, and incorporating mechanisms to ensure that the Land Use Advisory Committee is being appropriately used and the Land Use Plan is being carried out as intended.

Kainai raises the concern that the mitigation measures proposed for access are entirely reliant on a Land Use Plan that has yet to be finalized, of which the current Proponent has not provided sufficient detail as to how it will operate, and a Land Use Advisory Committee, whose role is not clear. Access is an integral component to mitigating the impacts of the Project on Kainai rights. Kainai is concerned about the Proponent's ability to facilitate a meaningful access regime regardless of the Agency including a condition that mandates the finalization of the Land Use Plan and the development of the Land Use Advisory Committee.

¹⁸ Draft EA Report, p. 97.

¹⁹ Draft EA Report, p 97.

²⁰ Draft EA Report, p 97.

The section below, titled Need for clarity on Land Use Advisory Committee, provides recommendations on how this may be resolved.

Availability and quality of resources for current use

The draft EA Report confirms Kainai's fears of significant adverse effects on the availability and quality of resources for current use.

Effects during construction and dry operations are predicted to be low in magnitude, extend to the regional assessment area, and be long-term, and irreversible "in areas of restricted access."²¹ Effects during flood and post-flood would be "moderate to high", across the region, long-term, and only reversible when "vegetation types and wildlife habitat sufficiently recovers for cultural practices to resume". The draft EA Report states that these effects would be infrequent, owing to the low probability of a 1:100 year or design flood.²²

The mitigation proposed for this impact on Kainai rights again refers back to the Land Use Plan. Although the Land Use Plan affords priority to Indigenous users, it is not sufficiently detailed to alleviate Kainai's concerns about the continued viability of this area for Aboriginal rights practice.

Quality of experience

The Agency concludes that residual effects to quality of experience during construction and dry operations, including "[n]uisance disturbances, interactions with land users, changes to aesthetics from project infrastructure, and access restrictions" will be long term but localized. During flood and post-flood operations, residual effects will be high in magnitude "due to drastic changes in aesthetics, potential for increased mortality risk of culturally important species, and changes in the cultural and spiritual connection with the land from the loss or alteration of

²¹ Draft EA Report, p 102.

²² Draft EA Report, p 102.

sites of importance”.²³ The Agency concludes that these residual effects would be infrequent due to the low probability of a 1:100 year or design flood.²⁴

Kainai notes that the “Agency believes that additional key mitigation measures would be necessary to ensure cultural practices persist and the quality of experience is maintained in the PDA and surrounding area”.²⁵ Despite contemplating and suggesting additional measures -- including: avoiding key traditional harvesting periods and conducting cultural awareness training – the residual effects on the quality of experience for Kainai land users remain.

Impacts to Physical and Cultural Heritage Resources and Sites of Significance

There will be significant adverse effects to physical and cultural heritage resources and sites of significance in the Project area. As identified, the Blackfoot have a significant number of physical and cultural heritage resources, and sites of significance in the Project area. The Agency states:

that some sites of importance and cultural heritage resources would be permanently lost, altered, or inaccessible and that the requirements mandated under the *Alberta Historical Resources Act* may not fully mitigate or protect these sites and resources.²⁶

The mitigation measures proposed do not seek to avoid impacts to Blackfoot physical and cultural heritage resources and sites of significance but rather mandates plans for the safe and appropriate removal of the physical and cultural heritage resources if identified. As a result, sites of significance will be “permanently lost, altered, or inaccessible”.²⁷ This is an unavoidable reality of a flood of the Project area.

The Blackfoot, and Kainai in particular, are uniquely impacted by the loss of culture and traditions through the potential destruction of physical and cultural heritage resources and sites of significance. The Project will adversely affect Blackfoot physical and cultural

²³ Draft EA Report, p 104.

²⁴ Draft EA Report, p 104.

²⁵ Draft EA Report, p 104.

²⁶ Draft EA Report, p 100.

²⁷ Draft EA Report, p 100.

heritage and sites of significance and the mitigation measures do not sufficiently address these concerns.

Cumulative Environmental Effects

The Agency concluded that “the Project, in combination with past, present and reasonably foreseeable projects, is not likely to cause significant adverse cumulative environmental effects and that no additional mitigation measures or follow-up measures are required”.²⁸

The Agency has recognized the concerns raised by Kainai, stating:

Indigenous nations noted that the privatization and development of lands throughout their traditional territory has already significantly affected their ability to use lands and resources for traditional purposes, which has had subsequent effects on culture and both individual and community well-being.²⁹

The analysis of cumulative environmental effects on Indigenous Peoples’ Current Use of Lands and Resources for Traditional Purposes does not sufficiently account for the threat posed by continued encroachment of development on Kainai traditional territory. Kainai’s ability to practice Aboriginal and Treaty rights and continue their cultural practices and ways of life is limited to an ever shrinking area – this Project exacerbates this effect.

Need for Meaningful Consultation

Throughout the draft potential conditions document, the Agency calls for mandatory “consultation with Indigenous groups”. The draft potential conditions document refers to consultation with Indigenous groups in each of the following conditions:

- Fish and Fish Habitat: 3.9; 3.10; 3.11; 3.16; 3.17; 3.18; 3.19; 3.20;

²⁸ Draft EA Report, p 127.

²⁹ Draft EA Report, p 131.

- Migratory Birds: 4.8; 4.10;
- Species at risk: 5.1; 5.2; 5.3; 5.4; 5.5;
- Atmospheric environment: 6.3;
- Human health: 7.3; 7.4; 7.8; 7.9;
- Current use of lands and resources for traditional purposes: 8.1; 8.3; 8.7; 8.8; 8.9; 8.11; 8.12; 8.13;
- Physical and cultural heritage and structures, sites or things of historical, archaeological, paleontological or architectural significance: 9.1; 9.2; 9.3; 9.4; 9.5; 9.9; and
- Accidents and Malfunctions: 10.2; 10.3; 10.6.

Although there is reference to consultation in the general conditions, consultation remains a broad concept that varies across the spectrum in interpretation and scope.

Kainai recommends that the Agency mandate the Proponent develop an approach to meaningful consultation between the Proponent and Kainai, which lays out the appropriate level of consultation for each condition.

At minimum, Kainai requests that the consultation approach reflects the strong claim to rights practice in the area.

Kainai recommends the following:

- extend the time period for affected parties to prepare their views and information (from 15 days) to 30 days for consultation related to Current use of lands and resources for traditional purposes; Physical and cultural heritage and structures, sites or things of historical, archaeological, paleontological or architectural significance; and Species at risk;
- add language that requires the Proponent to consider any extension request by an Indigenous group for consultation timelines and not unreasonably deny the extension request; and

- add language that requires the Proponent to meaningfully incorporate all views and information presented by Indigenous groups being consulted on the matter.

Need for clarity on Land Use Advisory Committee

Kainai is hopeful that the Land Use Advisory Committee will allow for meaningful engagement with Kainai regarding the use of the Project area, but remains concerned about the lack of detail provided in the plan and the assurances from the Proponent that issues will be dealt with further down in the process.

The conditions commit the Proponent to developing, in consultation with Indigenous groups, a terms of reference for the committee. A necessary step but one that does not establish the specific details of how the committee will operate. Kainai seeks this level of detail from the Proponent.

To achieve this objective, Kainai recommends:

- In developing the terms of reference and the structure of the Land Use Advisory Committee, the Proponent be required to give priority to representatives of Indigenous groups affected by the Project to hold leadership positions on the Committee.
- The Land Use Advisory Committee be responsible for approving the final Land Use Plan.
- The Proponent be required to provide reports to the Land Use Advisory Committee on their compliance with mitigation measures and the binding conditions. This will ensure that the Land Use Advisory Committee is sufficiently informed on the circumstances that impact land use in the Project area.
- The Proponent be required to give meaningful consideration to any recommendations that come from the Land Use Advisory Committee and, where the Proponent does not incorporate the recommendations, the Proponent must provide written reasons to the Land Use Advisory Committee as to why the recommendations could not be incorporated.

Need for an Indigenous Participation Plan

Alberta Transportation has taken a piece meal approach to providing economic opportunities to local Indigenous groups, including Kainai. Recognizing, the Agency's reasonable hesitation to include a binding condition related to an Indigenous Participation Plan, Kainai adds support to the Agency's encouragement of the "Proponent to work toward finalizing an Indigenous Participation Plan for each affected Indigenous nation".³⁰ Kainai recommends that an Indigenous Participation Plan require the Proponent take substantial actions to provide construction employment, jobs, and training for members of local Indigenous groups.

To reflect the need for greater accountability for the Proponent to include Kainai members and businesses in their resourcing plans, Kainai recommends the Agency include a condition such as:

- A. The Proponent must file with the Agency, at least 6 months prior to commencing construction, an Indigenous, local, and regional skills and business capacity inventory for the Project. The skills and capacity inventory must include:
 - i. a description of the information and data sources;
 - ii. a summary of Indigenous, local, and regional skills and business capacity;
 - iii. an analysis of the Indigenous, local and regional capacity for employment and business opportunities for the Project;
 - iv. plans for communicating employment and business opportunities to Indigenous, local, and regional communities;
 - v. description of identified or potential skills and business capacity gaps, and any proposed measures to address them or to support or increase skills or capacity; and
 - vi. plans for communicating identified gaps regarding skills and business capacity with Indigenous, local, and regional communities and

³⁰ Draft EA Report, p 144.

businesses, and any proposed measures to support or increase skills or capacity.

- B. The Proponent must file with the Agency, at least 3 months prior to commencing construction, any updates to the elements of the inventory described in A) i) through vi).

Need to accurately capture Kainai-specific concerns

Kainai requests that where specific concerns, effects, or impacts are directly connected to Kainai that the Agency correctly reference this to Kainai. As noted throughout consultation with the Agency and the Proponent, Kainai does not wish to be viewed as part of a pan Indigenous understanding of the Peoples in the area but rather a part of a distinct and unique Blackfoot culture.

4. Recommended adjustments to draft potential conditions

For additional changes and additions to the draft potential conditions, please see the table below. Note that recommended language is included in red and underlined.

Change of Proponent
<p>Condition 2.15</p> <p><i>The Proponent shall notify the Agency and Indigenous groups in writing no later than 30 days after the day on which there is any transfer of ownership, care, control or management of the Designated Project in whole or in part.</i></p> <p>Concern: Kainai requests advance notice of any transfer of ownership including when the Project is transferred to the care and control of Alberta Environment and Parks. Please advise ahead of time when the Project will be taken over by AEP.</p> <p>Recommend change:</p> <p>The Proponent shall notify the Agency and Indigenous groups in writing no later than <u>60 days prior to</u> the day on which there is any transfer of ownership, care,</p>

control or management of the Designated Project in whole or in part.

Migratory Birds

Condition 4.6

The Proponent shall remove sediment and debris in the off-stream reservoir within seven days after the draining of the reservoir. If it is not technically feasible for the Proponent to remove sediment and debris within seven days after the draining of the reservoir, the Proponent shall develop and implement additional mitigation measures, in consultation with relevant authorities, to avoid harm to migratory birds and their nests or eggs. The Proponent shall submit these measures to the Agency prior to implementing them.

Concern:

The Proponent is not required to consult, or even notify, Kainai (or other Indigenous groups) on the delay in removing sediment and debris from the reservoir. As Kainai has expressed concerns about the impact to the environment, wildlife, and the resulting impact to the practice of Aboriginal and Treaty rights, Kainai requests that they be notified of the Proponent's failure to meet the seven day requirement to permit conversations about additional consultation and accommodation that may be required.

Recommended change:

The Proponent shall remove sediment and debris in the off-stream reservoir within seven days after the draining of the reservoir. If it is not technically feasible for the Proponent to remove sediment and debris within seven days after the draining of the reservoir, the Proponent shall develop and implement additional mitigation measures, in consultation with relevant authorities and Indigenous groups, to avoid harm to migratory birds and their nests or eggs. The Proponent shall submit these measures to the Agency prior to implementing them. The Proponent shall submit written reasons to Indigenous groups and stakeholders as to why it was

not technically feasible for the Proponent to remove sediment and debris within the seven day timeline.

Condition 4.9

The Proponent shall conduct inventories of potential migratory bird habitat, including the collection of information on breeding bird densities and the presence of ground nesting birds, as well as mapping of important habitat features, shrublands, wetlands and grassland within the reservoir footprint every five years starting the first year of operation, and update the migratory bird protocol referred to in condition 4.8 based on the results of the inventories.

Concern:

These inventories do not account for Indigenous knowledge.

Recommended Change:

Add: The Proponent shall incorporate Indigenous knowledge of the area when conducting these inventories. The Proponent shall make funds available to provide compensation to Indigenous groups that choose to provide Indigenous knowledge.

Current use of lands and resources for traditional purposes

Condition 8.7

The Proponent shall provide the Agency and Indigenous groups with the final project design within seven days of its finalization and shall notify Indigenous groups at least 30 days in advance of construction to allow Indigenous groups to catalogue, harvest and transplant traditional and medicinal plants present within the project development area. The Proponent shall identify and implement, in consultation with Indigenous groups, time periods during which maintenance activities shall not occur within the project development area to accommodate Indigenous harvesting activities, unless if maintenance activities are necessary for safety reasons.

Concern:

Insufficient time to catalogue, harvest and transplant traditional and medicinal plants.

Recommended change:

The Proponent shall provide the Agency and Indigenous groups with the final project design within seven days of its finalization and shall notify Indigenous groups at least 60 days in advance of construction to allow Indigenous groups to catalogue, harvest and transplant traditional and medicinal plants present within the project development area. ...

Condition 8.9

The Proponent shall establish, in consultation with Indigenous groups, a staging area for Indigenous traditional use activities in close proximity to the land use areas identified in condition 8.8. The Proponent shall provide maps to the Agency and Indigenous groups of the staging area prior to construction.

Concern:

Does not include reference to any characteristics of the staging area

Recommended change:

Add: The Proponent shall build or permit the building of semi-permanent structures in the staging area to accommodate camping and hunting.

The Proponent, if requested by the Land Use Advisory Committee, shall review the size of the staging area and consider amendments that would increase the size of the staging area. The Proponent shall consider the effectiveness of the staging area in the preceding 5 years in accommodating adverse effects on Aboriginal and Treaty rights in making a determination to increase the size of the staging area.

Condition 8.11

The Proponent shall establish, prior to construction and in consultation with Indigenous groups, and maintain, throughout construction and operation, a Land Use Advisory Committee (the committee) to support the development and implementation of the Land Use Plan identified in condition 8.8. The Proponent shall invite Indigenous groups to participate in all committee activities. As part of the establishment of the committee, the Proponent shall co-develop Terms of Reference for the committee with Indigenous groups. The Proponent shall submit the completed Terms of Reference to the Agency prior to construction. The Terms of Reference shall include:

8.11.1 the means by which the Proponent and Indigenous groups shall jointly identify issues to be discussed by the committee, including issues related to the shared use of the project development area by the public for recreational and agricultural purposes and by Indigenous groups;

8.11.2 the frequency, timing and location of committee meetings during each phase of the Designated Project;

8.11.3 the means by which the Proponent shall share information related to the implementation of the Designated Project with the committee, including when and how information will be shared;

8.11.4 the means by which the Proponent shall document the activities of the committee including all views and information received through the committee; and how the Proponent has considered all views and information received through the committee;

8.11.5 the means by which the Proponent shall document any issue for which committee members are unable to find resolution, including a

rationale for the lack of resolution, and any solutions for finding a resolution proposed by the committee;

8.11.6 the means by which the Proponent shall share a yearly report documenting the information pursuant to conditions 8.11.4 and 8.11.5 with committee members and with the Agency, including when and how this information shall be shared; and

8.11.7 the means by which the Proponent shall evaluate and revise as necessary, in consultation with Indigenous groups, the Terms of Reference throughout construction and operation.

Concern:

See comments made in section 3 under the Need for clarity on Land Use Advisory Committee heading. In addition, the change below provides clarity on the role of the Land Use Advisory Committee in ensuring compliance with Proponent commitments.

Recommended change:

ADD: The committee shall be responsible for ensuring the Proponent complies with all conditions that relate to the future development of plans, follow-up programs, and protocols.

Yours truly,

JFK Law Corporation

Per: For: <original signed by>

Jeff Langlois

JLL/blf

cc: Annabel Crop Eared Wolf (<email address removed>)
Mike Oka (<email address removed>)
Blair Feltmate (<email address removed>)

Encl.

D. O'Connor, "Blood Tribe/Kainai Traditional Knowledge, Land, and Resource Use Study: Springbank Off-Stream Reservoir Project" (June 2018).