

STONEY TRIBAL ADMINISTRATION

December 13, 2024

Submitted via Email

Veronica Mossop
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Impact Assessment Agency of Canada
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Dear Ms. Mossop,

RE: Stoney Nakoda Nations – Review of Proposed Changes to the Springbank Off-Stream Reservoir Project

This letter is submitted to the Impact Assessment Agency of Canada (IAAC) by the Stoney Consultation Office. The Stoney Consultation Office works with Stoney Tribal Administration which represents the Stoney Nakoda Nations (“Stoney”), comprising the Bearspaw First Nation, Goodstoney First Nation, and Chiniki First Nation. The Chiefs and Councils of these three Nations have the authority to protect the collective rights and interests of their members as recognized by Treaty No. 7 and the *Natural Resources Transfer Agreement, 1930*, and protected by Section 35 of the *Constitution Act, 1982* (collectively referred to as “Section 35 rights”).

The IAAC notified Stoney about proposed changes to the Alberta Transportation and Economic Corridors (ATEC) Springbank Off-Stream Reservoir Project (the “Project”), requesting feedback by December 13, 2024. Along with its notification, the IAAC included ATEC’s May 2, 2023, memorandum to the IAAC requesting amendments to IAAC approval conditions for the Project, which included Stantec’s comments on revised fencing installation. Stoney understands that the IAAC paused its review of ATEC’s proposed changes in 2023, pending amendments to the *Impact Assessment Act (IAA)*. The IAAC’s review, now including updated amendments from ATEC, was subsequently resumed after the amended *IAA* came into force. Among the documents received by Stoney for review is the IAAC’s analysis of ATEC’s latest amendments to Condition 8.5.

In brief, ATEC’s proposed amendments include:

- Condition 1.32:** Change the reporting year from July 1 - June 30 to January 1 - December 31.
- Condition 2.13:** Change the annual report submission date from October 31 to April 30, if the above is approved.
- Condition 3.19:** Monitoring of suspended sediment during water flow.

Condition 8.5: Installation of 4- and 5-strand barbed wire along portions of Highway 22 and Springbank Road instead of wildlife-friendly fencing.

Condition 9.3: Renaming the 'Chance Find Procedure' to 'Historical Resource Act Section 31 Find Procedure' and revise notification timing for a Historical Resource Act Section 31 Find from 24 to 48 hours.

The IAAC concluded that the proposed Project changes are unlikely to cause significant environmental harm, considering existing mitigation measures and follow-up requirements. The IAAC also found no expected impact on the Indigenous rights identified in the Environmental Assessment Report – this conclusion was reached without first consulting Stoney.

Stoney has prepared a detailed review table, attached to this letter, which outlines Stoney's comments regarding the proposed Project changes. Stoney notes that changes to the fencing could impact Stoney's Section 35 rights, including through contribution to existing and additional cumulative effects on wildlife and wildlife movement in the Project area. Stoney requires additional mitigation, or where not possible, accommodation measures in response to the proposed changes.

Stoney requests additional discussion with the IAAC on how the proposed Project changes may impact Stoney's rights, and how those impacts can be mitigated/accommodated.

Sincerely,

<Original signed by>

William Snow

Acting Director of Consultation
Stoney Tribal Administration

Stoney's Review of ATEC's Proposed Changes to the Springbank Off-Stream Reservoir Project

Condition	Original Condition	Proposed Condition	Stoney Review – Context	Stoney Review – Concern/Action
Condition 1.32	Condition 1.32 Reporting year means July 1 of a calendar year through June 30 of the subsequent calendar year.	Condition 1.32 Reporting year means January 1 through December 31 of a calendar year. (ATEC, p.1)		Stoney has no comments on the proposed changes to Condition 1.32.
Condition 2.13	Condition 2.13 The Proponent shall submit to the Agency and the First Nation Land Use Committee referred to in condition 8.11 the annual report referred to in condition 2.11, including a plain language executive summary in both official languages, no later than October 31 following the reporting year to which the annual report applies.	Should IAAC agree to the revised reporting year as outlined in Section 1.1, of this memorandum, TEC is requesting that the annual report submission date, described in Condition 2.13, be adjusted to April 30, as opposed to October 31 to coincide with the revised reporting year (January 1 to December 31). The requested annual report submission date will remain 4 months from the end of the reporting year. Additionally, the reporting requirements outlined in Condition 2.13 will remain the same. Condition 2.13 The Proponent shall submit to the Agency and the First Nation Land Use Committee referred to in condition 8.11 the annual report referred to in condition 2.11, including a plain language executive summary in both official languages, no later than April 31 following the reporting year to which the annual report applies. (ATEC, p. 2)		Stoney has no comments on the proposed changes to Condition 2.13, and requests that a copy of all existing and future reports be sent to the Stoney Consultation Office c/o William Snow, Acting Director of Consultation, at bills@stoney-nation.com.

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<p>Condition 3.19</p>	<p>Condition 3.19 The Proponent shall develop and implement, in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to water quality. As part of the follow-up program, the Proponent shall:</p> <p>3.19.1 monitor, at a minimum daily during construction and monthly during operation, total suspended sediment levels at a minimum three locations in the Elbow River, one location in the immediate receiving environment, one location downstream of the low level outlet, and one location at the outlet channel.</p>	<p>Condition 3.19 The Proponent shall develop and implement, in consultation with Indigenous groups, Fisheries and Oceans Canada, Environment and Climate Change Canada and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to water quality. As part of the follow-up program, the Proponent shall:</p> <p>3.19.1 monitor, <u>total suspended sediment levels at a minimum three locations in the Elbow River daily during construction and monthly during operation. Monitor total suspended sediment levels when water is present in Unnamed Creek during construction and during flood operation,</u> at one location in the immediate receiving environment, one location downstream of the low level outlet, and one location at the outlet channel. (ATEC, p. 2)</p>	<p>Suspended sediment is only present within the water flow.</p>	<p>Stoney has no concerns with not monitoring suspended sediment without water flow.</p>

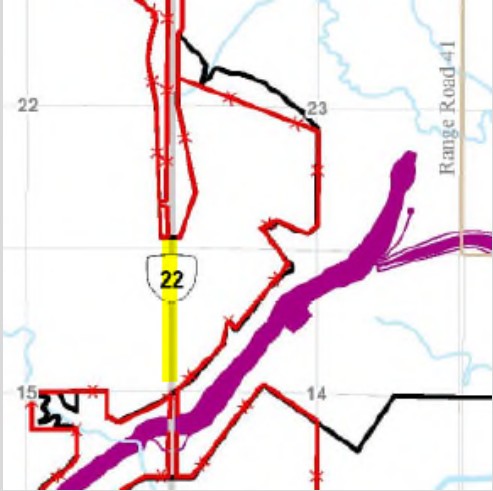
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<p>Condition 8.5</p>	<p>Condition 8.5 The Proponent shall install and maintain, during construction and operation, one underpass under Highway 22 where it crosses the diversion channel and wildlife friendly fences to provide passage for grizzly bear western population (<i>Ursus arctos</i>) and ungulates. The Proponent shall install the wildlife friendly fences as identified in Figure IR 15-1 submitted in the Response to Information Requests Round 1 Package 2 (Canadian Impact Assessment Registry Reference Number 80123, Document Number 1260), taking into account Alberta Conservation Association Landholder's Guide to Wildlife Friendly Fencing, to prevent access by livestock and allow safe passage for wildlife. The Proponent shall maintain the fences during all phases of the Designated Project.</p>	<p>8.5 The Proponent shall <u>implement measures to mitigate effects of the Designated Project on the movement of grizzly bear western population (<i>Ursus arctos</i>) and ungulates, including:</u></p> <p>8.5.1 <u>installing and maintaining during construction and operation, an underpass under Highway 22 where it crosses the diversion channel to allow safe passage for grizzly bear western population (<i>Ursus arctos</i>) and ungulates;</u> and</p> <p>8.5.2 <u>utilizing wildlife-friendly fencing for all fencing required for the Designated Project, unless otherwise required for safety reasons or if the fencing is in areas that are not in the care and control of the Proponent, taking into account Alberta Conservation Association Landholder's Guide to Wildlife Friendly Fencing. As part of the annual report for the Designated Project referred to in condition 2.10, the Proponent shall provide the Agency with a current map of Designated Project fencing.</u> The Proponent shall maintain the fencing during all phases of the Designated Project. (IAAC, p. 15-16)</p>	<p>As discussed during the regulatory process for the Springbank Off-Stream Reservoir Project, Stoney's Section 35 rights are connected to cultural, social, and ceremonial practices that extend beyond mere subsistence purposes. As an example, hunting practices are grounded in stewardship and respect for land and animals. It is crucial that Stoney access traditional sites for passing down knowledge to younger generations. The ability of Stoney members to exercise their rights is influenced by the quality and quantity of important wildlife species, which are currently affected by development.</p> <p>Stoney Avoidance Behaviours are defined as an action or a choice to avoid nonpreferred conditions or attributes for harvesting or cultural activities. Development types may result in perceived or real impacts, which result in avoidance behaviours. Approximately 71% of Stoney members do not prefer to hunt where there are fences, and approximately 64% would be bothered if their ceremonial site, cultural site, or sacred site was fenced.</p> <p>Stoney's Interim Traditional Land Use Assessment Report for the Project notes that Highway 1 and Highway 22 already "impede wildlife movement by intersecting the Project area north/south and east/west, the development of infrastructure for the proposed Project will increase this fragmentation potentially pushing the animals and fish away from the Stoney Nakoda Reserve area, and impacting the accessibility of culturally significant animals, fish, and birds that are hunted and harvested under Stoney Nakoda Section 35 rights." (Stoney Consultation, 2021, p. 9)</p> <p>This was also mentioned during the Project Staging Area Workshop ("workshop") held on October 2 and 3, 2024, where Stoney and other Indigenous nations observed that the area</p>	<p>Stantec's memo indicates that wildlife attempting to cross Highway 22 from the east or west may be discouraged by the proposed 5-strand fencing. This fencing could redirect some wildlife north toward Highway 1, potentially reducing animal fatalities along Highway 22 but increasing them along the major highway. Highway 1 is a higher speed road (110 km/hr) compared to Highway 22 (80 km/hr) with greater traffic volumes and a limited number of wildlife underpasses and overpasses, thus posing higher risks for animal fatalities and human safety. Stoney voiced concern numerous times during the Project hearing over the limited number of wildlife underpasses and overpasses in this area in general. Should wildlife not be deterred from crossing Highway 22 by the proposed fencing, a single new underpass is inadequate to address existing concerns with wildlife movement in the area, let alone during the life of the Project, and further with additional fencing. These issues highlight inadequate consideration and planning related to wildlife movement when planning for the Project.</p> <p>Stantec assumes that wildlife not deflecting north to Highway 1 would cross where the 5-strand wire ends in the south. There are several sections of wildlife-friendly fencing at the end of the 5-strand fence on the south side, which may frustrate wildlife and cause further deflection or avoidance. There is only a narrow section (~0.8 km) that is more passable, requiring wildlife to cross only one row of wildlife-friendly fencing. Stantec also indicates that wildlife attempting to cross the 4-strand fencing along Springbank Road would be deflected to more easily passable areas with damaged or missing fencing. If ATEC is referring to missing or broken</p>

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			<p>surrounding the Project once had an abundance of culturally significant animals. However, they noted that development has altered the movement patterns of these animals, including large game like elk, and non-consumptive species such as grizzlies, over the past 20 years. There is a deep concern among Stoney about the additional impact the Project will have on wildlife movement and Stoney ability to continue practicing aspects of their Section 35 rights. Stoney is concerned that the original Project Conditions are not sufficient to mitigate impacts on wildlife and their movement; Stoney has even greater concern about the effectiveness of the Project Conditions if ATEC's proposed changes are adopted.</p> <p>The Project's Environmental Impact Assessment recognizes that "Construction activities associated with the development of project structures, access roads as well as road realignments have potential to create physical barriers or sensory disturbance that might hinder wildlife movement " and "Constructed reservoirs, and their associated canals, have been documented to act as barriers to wildlife movement (Andrews 1990; Messing 1990)...The diversion channel and off-stream reservoir would be flooded with water during a flood and serve as a physical barrier to wildlife." The installation of wildlife-friendly fencing was one of the proposed mitigation measures for addressing these Project impacts on wildlife movement.</p> <p>ATEC is now proposing to replace some of this wildlife-friendly fencing with 4- and 5-strand fencing at the request of landowners to prevent livestock from accessing Highway 22. According to Stantec's Memo, "the installation of 5-strand barbed-wire fencing along the future raising of Highway 22 and Springbank Road intersection as well as the installation of Class B 4-strand barbed wire fencing along Springbank Road and</p>	<p>fencing on private lands, it is improbable that landowners would neglect their fencing, especially due to their proximity to busy roads. If ATEC is referring to missing or broken fencing on Project lands, this would constitute a breach of their duty to install and maintain the fencing throughout all phases of the Project. The assumption that wildlife would deflect to broken or missing fencing lacks a logical basis. Is ATEC suggesting they can commit that fencing under both private and Crown control will remain unrepaired for the lifetime of the project?</p> <p>Stantec also claims the new 4- and 5- strand fencing will function like baseline conditions, as fences present in the area previously also served as "semi-permeable" barriers to wildlife. However, this overlooks that wildlife-friendly fencing was a mitigation measure with the objective of offsetting Project impacts. The Project is proposed to operate indefinitely, and therefore conditions will never return to the baseline; it is inappropriate to justify replacing mitigation measures with baseline conditions, when baseline conditions will never exist for the whole Project area again. Stoney also notes that from the beginning, fences were erected to contain domestic animals and prevent wildlife and Indigenous land users from accessing private lands and Crown leases. Fences were some of the first disturbances to add to cumulative effects. It is not accurate to consider them as representing baseline conditions.</p> <p>The proposed installation of 4- and 5-strand barbed wire fencing would introduce about 5 km of barriers for wildlife along Highway 22. This, and the additional proposed wildlife-friendly fencing along Highway 22, could potentially push wildlife further north or west</p>

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			<p>Township Road 244 will not facilitate wildlife movement in these locations to the same extent as wildlife-friendly fencing." While ATEC has reduced the use of 4- and 5-strand barbed wire fencing from what was initially reported in Stantec's memo, additional wildlife-friendly fencing is proposed along Highway 22. This narrows the area that ATEC considers easily accessible by wildlife to the highlighted section below:</p>  <p>In addition, during the workshop on October 2-3, 2024, the northeastern staging area was suggested as the next best option to Camp Kiwanis for the Project staging area. The northeast staging area is near an important, immovable Stoney cultural site.</p>	<p>and further prevents south-to-north movement, considering the reservoir itself is a permanent barrier. This could result in wildlife avoiding the Project area altogether, impacting their reintroduction during the Project's operation.</p> <p>There are significant Stoney cultural sites near the Project area. Stoney's ability to practice Section 35 rights may be hindered by real or perceived impacts, including injuries to wildlife from barbed wire, and wildlife avoidance of the fenced area. Stoney members would likely partially or fully avoid the Project area. This represents a lasting impact on Stoney's rights, requiring proper mitigation and accommodation measures.</p> <p>Requests:</p> <p>Stoney has concluded that there may be residual effects on Section 35 rights due to the elimination of mitigation measures that were proposed, assessed, and approved during the Project's regulatory process. Stoney's primary aim in participating in the Project's regulatory process was to protect Stoney's Section 35 rights by ensuring the implementation of adequate mitigation and accommodation measures. It is unjust to revoke these mitigation measures, particularly without conducting a more thorough assessment. ATEC should bear the responsibility of neglecting to inform other parties of their agreement with the landowners to reinstall 4- and 5-strand barbed wire prior to Project approval. Therefore, Stoney requests:</p> <ul style="list-style-type: none"> • A more thorough assessment to understand potential impacts prior to seeking approval for the proposed changes. Alternatively, ATEC can withdraw the proposed amendment

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				<p>and continue with the wildlife-friendly fencing.</p> <ul style="list-style-type: none"> • Stoney understands that a monitoring agreement is underway, but if the proposed changes are approved, Stoney requests a more robust monitoring plan that involves the monitoring of the impact of fencing and cumulative effects on wildlife and wildlife movement and Stoney's Section 35 rights. • Commitment to provide adequate accommodation measures if the monitors report barriers to wildlife movement because of the additional fencing.

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<p>Condition 9.3</p>	<p>Condition 9.3 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Alberta Ministry of Culture, Multiculturalism and Status of Women, and implement, during construction and operation, an archaeological and heritage management plan for any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources within the project development area, including, but not limited to sites and things subject to the Alberta Historical Act. The archaeological resources and heritage management plan shall include:</p> <p>9.3.4 a chance find procedure to apply in the event that any previously unidentified structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources are discovered within the project development area by the Proponent or brought to the attention of the Proponent by an Indigenous group. As part of the chance find procedure the Proponent shall:</p> <p>9.3.4.1 immediately halt work at the location of the discovery, except for actions required to be undertaken to protect the integrity of the discovery;</p> <p>9.3.4.2 delineate an area of at least 30 metres around the discovery as a no-work zone;</p> <p>9.3.4.3 inform the Agency and Indigenous groups within 24 hours of the discovery, and allow Indigenous groups to monitor archaeological works at the location of the discovery;</p> <p>9.3.4.4 have a qualified individual, who is a registered archeologist under the Alberta's Historical Resources Act, conduct an</p>	<p>Condition 9.3 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Alberta Ministry of Culture, Multiculturalism and Status of Women, and implement, during construction and operation, an archaeological and heritage management plan for any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources within the project development area, including, but not limited to sites and things subject to the Alberta Historical Act. The archaeological resources and heritage management plan shall include:</p> <p>9.3.4 a <u>Historical Resource Act Section 31 Find Procedure</u> to apply in the event that any previously unidentified structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources are discovered within the project development area by the Proponent or brought to the attention of the Proponent by an Indigenous group. As part of the <u>Historical Resource Act Section 31 Find Procedure</u> the Proponent shall:</p> <p>9.3.4.1 immediately halt work at the location of the discovery, except for actions required to be undertaken to protect the integrity of the discovery;</p> <p>9.3.4.2 delineate an area of at least 30 metres around the discovery as a no-work zone;</p> <p>9.3.4.3 inform the Agency and Indigenous groups within 24 hours of the discovery, and allow Indigenous groups to monitor archaeological works at the location of the discovery;</p>	<p>TEC has proposed renaming the 'Chance Find Procedure' to 'Historical Resource Act Section 31 Find Procedure' based on feedback from Indigenous groups.</p> <p>Additionally, TEC intends to revise the notification timing for a Historical Resource Act Section 31 find from 24 hours to a target timing of 48 hours.</p>	<p>Stoney has no objections to the name change from 'Chance Find Procedure' to 'Historical Resource Act Section 31 Find Procedure'.</p> <p>Stoney has ongoing concerns regarding the recent finds. Specifically, the current handling and storage procedures for HRA Finds do not align with Stoney protocols for protecting important cultural resources. Disturbances to fragments of culturally significant items or species can sometimes be rectified through ceremony. Stoney's protocols require early involvement in identifying and monitoring the handling of such finds.</p> <p>Requests:</p> <ol style="list-style-type: none"> 1. Stoney requests a notification period of no more than 24 hours to ensure proper identification of the find, adherence to cultural protocols, and timely conduct of a ceremony once the find is confirmed. 2. One of the Project's Conditions of Approval was to develop "an archaeological and heritage management plan in consultation with the Stoney Nakoda Nations for any structures, sites, or things of historical, archaeological, or architectural significance or physical or cultural heritage resources within the Project Development Area, including but not limited to sites and things subject to the Historical Resources Act." Therefore, Stoney requires ATEC's engagement to develop procedures and compliance methods that align with Stoney's protocols for unearthing culturally important artifacts, to be included in the archaeological and heritage management plan.

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	<p>assessment at the location of the discovery; and</p> <p>9.3.4.5 consult with Indigenous groups and relevant authorities with respect to applicable legislative or legal requirements and associated regulations and protocols respecting the discovery, recording, transferring and safekeeping of previously unidentified structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources.</p>	<p>9.3.4.4 have a qualified individual, who is a registered archeologist under the Alberta's Historical Resources Act, conduct an assessment at the location of the discovery; and</p> <p>9.3.4.5 consult with Indigenous groups and relevant authorities with respect to applicable legislative or legal requirements and associated regulations and protocols respecting the discovery, recording, transferring and safekeeping of previously unidentified structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources.</p>		<p>3. Stoney also requests that ATEC continue discussions with Stoney regarding monitoring agreements, so that Stoney can deploy monitors to be present in the event of additional HRA finds.</p>