



ALBERTA
ENVIRONMENTAL APPEALS BOARD

January 28, 2020

Via E-Mail

Mr. Dean Cherkas
Director of Consultation
Stoney Tribal Administration
Stoney Nakoda Nation
PO Box 40
Morley, AB T0L 1N0
(Appellant EAB 19-050)

Mr. Malcolm Macpherson
Mr. Saul Joseph
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900-855 West Georgia Street
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(Representing the Appellant EAB 19-050)

Mr. Ken Hoover
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(Appellant EAB 19-086)

Ms. Lisa Semenchuk
Ms. Shannon Keehn
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6
(Counsel for the Director)

Mr. Thomas Heath
Fortress Mountain Holdings Ltd.
Box 8173
Canmore, AB T1W 2T9
(Licence Holder)

Dear Ladies and Gentlemen:

Re: Fortress Mountain Holdings Ltd./Water Act Licence No. 00037369-00-03
Our File No.: EAB 19-050 and 086

The Board acknowledges receipt of the attached letters dated January 24, 2020 from Mr. Cherkas providing the Stoney Nakoda Nation's rebuttal submission in relation to the filing date of their Notice of Appeal.

The Board will provide its decision with respect to the timing of the filing of the Notice of Appeal as soon as possible. As advised previously, the granting of the extension of time is at the discretion of the Board and is not routinely granted.

The Board acknowledges the additional motions raised in Ms. Semenchuk's January 17, 2020 letter with respect to the Stoney Nakoda Nation's statement of concern and their directly affected status. The Board also acknowledges Mr. Cherka's response to those motions in his January 24, 2020 letter. At this time, the Board is only deciding on the timing of the filing of the Notice of

Appeal. Should the appeal proceed, the Board will provide the participants with an opportunity to raise preliminary motions, including addressing Ms. Semenchuk's further motions.

Further to the Board's January 23, 2020 letter, the Board will deal with Mr. Hoover's appeal once his response is received on January 31, 2020.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialling 310-0000 followed by 780-427-6569 for Valerie Myrmo and 780-427-7002 for Denise Black. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca and denise.black@gov.ab.ca.

Yours truly,



Valerie Myrmo
Registrar of Appeals

Att.

The information requested is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. The information you provide will be considered a public record.

Valerie Myrmo

From: [Keri Letourneau <KLetourneau@cwilson.com>](mailto:KLetourneau@cwilson.com)
Sent: [Friday, January 24, 2020 12:58 PM](#)
To: Valerie Myrmo
Cc: Denise Black; 'thomas.health@skifortress.com'; Lisa Semenchuk; Shannon Keehn; 'Ryan Robb'; 'Valerie Gilmore'; Malcolm Macpherson; ! Dean Cherkas; Saul Joseph
Subject: Fortress Mountain Holdings Ltd. ("Fortress")/Water Act Licence No. 0037369-00-03: EAB 19- 050 - Appeal [CWILSON-C.FID1226112]
Attachments: January 24 Lt re Alberta Justice, Fortress Appeal.pdf; January 24 Lt re Fortress, Appeal.pdf

Ms. Myrmo,

Attached please find correspondence from Mr. Cherkas on behalf of Stoney Tribal Administration for your attention.

Regards,

Keri Letourneau | Clark Wilson LLP

Legal Administrative Assistant

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STONEY TRIBAL ADMINISTRATION

January 24, 2019

SENT VIA EMAIL: valerie.myrmo@gov.ab.ca

Alberta Environmental Appeals Board
306 Peace Hills Trust Tower
10011 - 109 Street
Edmonton, Alberta
T5J 3S8

**Re: Fortress Mountain Holdings Ltd. ("Fortress") correspondence to the Alberta Environmental Appeals Board (the "Board") of January 15, 2019 (the "Fortress Letter")
Fortress *Water Act* Licence No. 0037369-00-03 - EAB 19-050**

Further to the Board letter dated January 22, 2010 and the Fortress Letter, I am providing the additional comments on behalf of Stoney Nakoda Nation ("**SNN**").

1) Introduction

In the Fortress Letter, Fortress makes many assertions that we will address here.

Mr. Heath asserts that the appeal process had been clearly defined to SNN, this was not in fact the case. SNN was not unaware of the appeal process because it undertook, of its own initiative and entirely with its own effort, to understand the opportunities for seeking appeal. This was done following receipt of the letter from Alberta Justice and Solicitor General ("**Alberta**") which was dated October 10, 2019 and received by SNN on October 28, 2019.

Alberta took 2 ½ months to review and respond to SNN's statement of concern (submitted August 2, 2019 and response received on October 28, 2019). Based on Alberta's conduct SNN did not have any reason to make the assumption that Alberta was now proceeding at break neck pace to approve the application, and to make every effort to prohibit SNN from exercising its legal rights.

SNN is unclear from the Fortress Letter what, if any, argument Fortress is attempting to make. Given how unclear the position of Fortress is, SNN is making the assumption that Fortress is arguing that Alberta provided enough consideration to SNN's statement of concern and that, on that basis alone – without consideration to Alberta's *Constitutional* obligations which are above and beyond other affected stakeholders, should be a sufficient process.

Further, it appears that Fortress is arguing that since the decision was made on October 25, 2019 that the Board should strictly apply the 30-day time period for bringing an appeal without consideration of any of the multiple mitigating factors, including that:

- a. Alberta did not provide SNN with notice that it did not intend to provide SNN with notice of any decision;
- b. Alberta did not provide SNN with notice that a decision was looming;
- c. Alberta made the decision prior to SNN receiving Alberta's letter dated October 10, 2019;
- d. Alberta did not provide SNN with any opportunity to review and respond to the October 10, 2019 letter;
- e. Alberta did not provide SNN with notice of the decision;
- f. Fortress did not provide SNN with notice of the decision;
- g. Alberta incorrectly applied the law by incorrectly denying that the duty to consult had been triggered and did not seriously consider or engage in any consultation or engagement process at all with SNN about its concerns;
- h. Fortress failed to engage with SNN in any meaningful manner;
- i. Fortress failed to address SNN's concerns in any manner whatsoever;
- j. Fortress incorrectly identified the relevant dates and presented incorrect dates to mislead the Board and to try to strengthen its arguments. As Alberta has noted, the decision was made on October 25, 2019 and conveyed to Fortress on October 30, 2019 and was allegedly put on the Alberta website on October 31, 2019; and
- k. SNN became aware of the decision on November 19, 2019 and it is very clearly from that date upon which the 30-day period for launching an appeal begins.

Fortress is arguing for strict application of the start of the 30-day appeal period without providing any compelling argument and in direct contradiction to the *Water Act*.

Given Fortress' weak arguments, incorrect and misleading facts, contradiction to processes set out in the *Water Act*, the various and compelling mitigating factors presented above, and in order to protect the public interest, the Board must disregard Fortress' arguments.

Further, with respect to the start date for the 30-day appeal period, the Board must determine that the proper start date is November 19, 2019 and that SNN submitted its appeal within the statutory time-period.

2) Fairness

Fortress goes on to make an argument that to allow SNN to launch an appeal outside of the strictly applied 30-day period would be unfair to Fortress and would grant SNN an additional benefit.

For the reasons set out above and expanded upon below, this argument of Fortress must also fail.

Fortress asserts that “[t]he appeal process is one that needs to be specifically and accurately implemented as it provides a level playing field for all involved.” SNN is in agreement. However; had Fortress taken the time to familiarize itself with the *Water Act* and had considered the facts of this case it would know that its requests are in contradiction to the *Water Act* and cannot be supported. Fortress is, incorrectly, making the assertion that the date upon which SNN submitted its Notice of Appeal was outside of the statutory time-period. This assertion is incorrect.

The 30-day period begins on the date upon which notice is provided. Alberta admits that it did not provide any notice to SNN of its decision. Fortress did not provide notice of the decision to SNN. Alberta made the decision before providing SNN with notice of its determination with respect to SNN’s statement of concern. SNN was not provided with any opportunity to review and respond to Alberta’s October 10, 2019 letter before immediately being forced to rush to launch these appeal proceedings.

Fortress directs the following *ad hominem* arguments to the Board:

- a. the appeal process would not be respected by allowing SNN’s appeal;
- b. to allow SNN’s appeal would show bias to SNN and would be unfair to Fortress;
- c. the Board’s actions to date in considering SNN’s appeal show that the Board lacks credibility and has established a precedent that will affect future public notices; and
- d. reiterates that to allow SNN’s appeal would show bias towards SNN and would demonstrate unfairness to Fortress.

Fortress’ arguments must fail because they are illogical, irrelevant to the facts, and inconsistent with the *Water Act*.

Fortress cannot seek to bully and intimidate the Board into making decisions that are in contradiction to the *Water Act*, administrative law, *Constitutional law*, and natural justice.

3) Filing Date of the Notice of Appeal

Fortress is repeating its arguments from the beginning of the Fortress Letter. However, Fortress provides the additional facts and arguments which further bolster the argument that SNN’s appeal should be allowed to proceed:

- a. Fortress acknowledges that it did not provide SNN with notice of Alberta’s decision;
- b. Fortress states that the date for the 30-day period to start is October 10, 2019 – the date upon which Alberta mailed its letter to SNN (which was ultimately received on October 28, 2019), which is clearly incorrect. This is an entirely new argument and

entirely unsupportable date. In the Fortress Letter, Fortress sets out several incorrect and contradictory dates upon which the 30-day period was to begin. Arguing that the 30-day period was to begin on October 10, 2019 is absurd and should be readily dismissed by the Board. Fortress is attempting to mislead the Board for its own benefit. Fortress has mischaracterized the terms of the *Water Act* on several occasions for its own benefit;

- c. Fortress continues its *ad hominem* attacks against SNN by arguing that “Mr. Cherkas still took a full 30 days from that time to submit his notice of appeal. This seems unusually ‘casual’ considering Mr. Cherkas would have been well aware that the deadline for submission was (at the latest) November 24, 2019”. Fortress is attempting to create a negative inference from SNN taking the time that it is statutorily entitled to in order to prepare a well-researched and reasoned appeal, which is, of course, absurd and very inappropriate and unprofessional. Fortress again uses incorrect dates for the start of the 30-day period which are in direct contradiction to the dates set out in the paragraph immediately above. Fortress’ arguments are nonsensical, irrelevant, unsupported by the facts, contradictory to the *Water Act*, and are professionally repugnant; and
- d. Fortress asserts that it was the sole responsibility of SNN to inform itself of anything to do with respect to the decision. This is, of course, absurd. Both Alberta and Fortress owed SNN a duty to keep them informed of the process and any decision. Neither Alberta nor Fortress provided SNN with notice of any kind. SNN was forced to shoulder the unnecessary burden of staying informed, gathering information, and challenging Alberta’s decision, which is patently unreasonable.

The sheer volume of *ad hominem*, inaccuracies, incorrect statutory interpretation, and bullying present in Fortress’ letter is staggering. The Board should ensure that Fortress is made aware that it cannot conduct itself so poorly and unprofessionally and that it is subject to the same legal burdens as every other proponent. Fortress should not be granted any particular benefit or shown any favour, particularly since it has shown a propensity for attempting to mislead, insult, and otherwise question the credibility of the Board and SNN.

4) Engagement with SNN by Fortress

Fortress makes weak arguments that Fortress did carry out some engagement with SNN; however, Fortress does not allege that it sought to understand or address SNN’s concerns, because it has not done so.

Further, in the email provided by Mr. Heath dated August 8, 2019, Fortress does not address SNN’s concerns in any manner. Rather, Mr. Heath simply provides further evidence of how Fortress would benefit from the application. Mr. Heath does not provide any meaningful response to SNN’s concerns in his August 8, 2019 email and has not done so at any other time.

Fortress is of the opinion that it can ignore SNN’s interests and concerns.

Fortress operates directly within SNN territory. Fortress has consistently shown a high-degree of disrespect and has made it abundantly clear that Fortress is not interested in developing any sort of relationship with SNN, understanding SNN’s inherent, treaty, and Aboriginal rights, understanding SNN’s

concerns, or addressing the adverse impacts of its actions upon SNN's *Constitutionally* protected and other rights.

Fortress cannot be relied upon to carry out any engagement with SNN. It was with full knowledge of Fortress' consistent poor conduct that SNN made the decision to not respond to Mr. Heath's email of August 8, 2019 – there was no point. Nothing could be gained by responding to an email in which Mr. Heath simply sought to further justify Fortress' poor conduct and refused to acknowledge any of the adverse impacts that Fortress is causing to SNN's rights.

5) Traffic

Lastly, it appears as though Mr. Heath is attempting to highlight an alleged contradiction by informing the Board that SNN "recently opened a large truck stop on Alberta Provincial Highway 40." The only possible inference is that Mr. Heath is attempting to cast aspersions on SNN's motives by noting the existence of this unrelated project.

In short, the truck stop does not in itself increase traffic whatsoever and bears no relevance to the concerns raised by SNN that Fortress' project will increase traffic through SNN territories. Mr. Heath's stated assumption that SNN desires an increase in traffic is baseless and incorrect.

SNN holds inherent, Aboriginal and Treaty rights to benefit from its lands. Inherent in Mr. Heath's line of reasoning is the inference that where SNN benefits from its lands that SNN should not be permitted to raise issue with any other remotely related commercial activity within its territories. Mr. Heath's argument is, of course, unfounded and absurd.

The Bearspaw Travel Centre opened on May 24th, 2019 and is located entirely within SNN Reserve Land. The Bearspaw Travel Centre includes an Esso Gas Station and a Tim Hortons coffee shop. It is the first Tim Hortons to be opened on a Southern Alberta First Nation.

SNN does not need to justify its decision to create a minor benefit from existing traffic to Mr. Heath, the Board, or anyone else. The only reason SNN is choosing to respond at all to Mr. Heath's point is that the Board's attention needs to be drawn to this line of reasoning in order to properly assess the degree to which Mr. Heath is willing to denigrate SNN in order to seek financial gain for Fortress.

6) Conclusion

Mr. Heath set out so many contradictions, misleading statement, *ad hominem* arguments, inconsistencies, and inaccurate legal interpretations that it poses a challenge for SNN to untangle, interpret and respond to the Fortress Letter. However, within this letter SNN has sought to thoroughly address each point raised by Fortress.

Each of Mr. Heath's errors which have been highlighted in this letter should be dismissed by the Board without any further consideration.

The little accurate information which was provided by Mr. Heath in the Fortress Letter acts to bolster SNN's case for appeal, including that:

- a. Fortress admits to not providing notice of Alberta's decision to SNN; and

- b. Fortress provides an email of August 8, 2019 which shows how little regard Fortress has for SNN's rights, interests, and concerns.

Fortress does not provide any evidence of carrying out any meaningful engagement with SNN or of any action by Fortress to understand and respond to the very serious concerns raised by SNN.

Despite all of Fortress' poor conduct to date, Fortress states that it "maintains intent to positively work with all of our community members, the SNN is very much part of that."

While Fortress has yet to take any concrete steps that demonstrate its stated intent, SNN is legitimately committed to building a working relationship with Fortress – to ensure that SNN's time, energy, and resources are not wasted on further fighting with Fortress over decisions that should not be made in the first place.

SNN asks the Board to complete a fulsome appeal process of Alberta's decision.

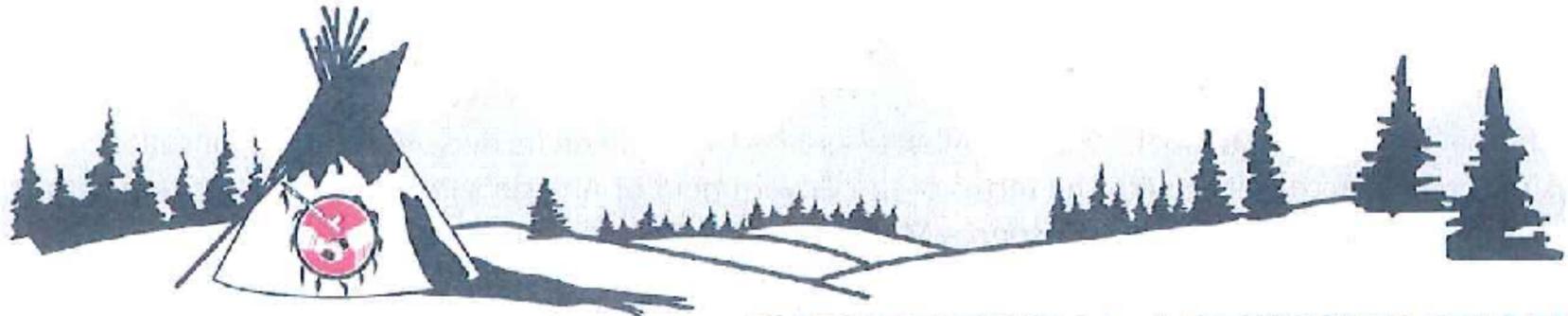
If you have any questions please do not hesitate to contact me.

Regards,

Signature: 

Dean Cherkas

cc: Denise Black, denise.black@gov.ab.ca
Mr. Thomas Heath, thomas.heath@skifortress.com
Ms. Lisa Semenchuk, lisa.semenchuk@gov.ab.ca
Ms. Shannon Keehn, Shannon.keehn@gov.ab.ca
SNN Chiefs
Ryan Robb
Malcolm Macpherson



STONEY TRIBAL ADMINISTRATION

January 24, 2020

SENT VIA EMAIL: valerie.myrmo@gov.ab.ca

Alberta Environmental Appeals Board
306 Peace Hills Trust Tower
10011 - 109 Street
Edmonton, Alberta
T5J 3S8

**Re: Fortress Mountain Holdings Ltd. ("Fortress")/Water Act Licence No. 0037369-00-03: EAB 19-050
Alberta Justice and Solicitor General ("Alberta") correspondence to the Alberta Environmental Appeals Board (the "Board") dated January 17, 2019 (the "Alberta Letter")**

Further to the Board letter dated January 22, 2010 and the Alberta Letter, I am providing the additional comments on behalf of Stoney Nakoda Nation ("SNN").

1. Notice

In the Alberta Letter, Alberta confirmed that it did not provide SNN with notice of its decision to approve Fortress' *Water Act* licence amendment.

Based on Alberta's own admission that it did not provide notice of its decision, the 30 day period for launching an appeal must begin on the date upon which SNN became aware of the decision (November 19, 2019).

a) Duty to Consult

In its letter of October 10, 2019 as well as in the Alberta Letter, respectively, Alberta acknowledges the following:

"the Department has determined that no consultation is required in relation to this application...[t]he application has minimal potential to adversely impact Treaty rights or traditional uses"

and

"...made it improbable that there would be any change or effect on SNN resulting from the proposed Licence amendment."

Further, in its letter of October 10, 2019, Alberta asserts that it made its decision that no consultation was required in accordance with the terms of the Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013 (the "**Consultation Policy**").

With respect to when the duty to consult is triggered, the Consultation Policy states:

"Alberta recognizes that a duty to consult exists when the following three factors are all present:

1. Alberta has real or constructive knowledge of a right;
2. Alberta's decision relating to land and natural resource management is contemplated; and
3. Alberta's decision has the potential to adversely impact the continued exercise of a right."

In this instance, Alberta has both real and constructive knowledge of SNN's rights. The decision of whether or not to approve the licence relates to land and natural resource management and Alberta had knowledge of potential adverse impacts to SNN's inherent, Aboriginal and Treaty rights, which are recognized and affirmed by section 35 of the *Constitution Act, 1982* (the "**SNN Section 35 Rights**").

The Policy clearly states that, where the requirements are met, that "Alberta will consult with First Nations when Crown land and natural resource management decisions may adversely impact Treaty rights protected under the *Constitution Act, 1982*, as well as traditional uses."

In this instance, all three requirements are met and the duty to consult was clearly triggered.

Within both the October 10, 2019 and Alberta Letter, Alberta acknowledges that there is a potential for adverse impacts. However, Alberta made the incorrect and premature determination that the potential for adverse impacts to the SNN Section 35 Rights is remote and that the duty to consult was not triggered without notice, discussions and considerations of the concerns of the SNN through any form of consultation. Upon determining that there was some potential for adverse impacts, Alberta's next step and obligation was to then further investigate and actually consult with the SNN to determine the degree, severity and likelihood of this potential adverse impact. Alberta did no such thing.

Therefore, it is plainly obvious that Alberta made the incorrect and premature determination that SNN was not directly impacted and that the duty to consult was not triggered. There is no legal ambiguity in Alberta's incorrect application of the law and failure to meet its legal obligations. Such a predetermination clearly breaches the rules of natural justice and procedural fairness.

Alberta also made its determination in applying its own policy and the law on a clearly incorrect basis: their determination of relevance and impact was solely focused on current and existing reserve land interests and no other interests by way of treaty rights, Aboriginal rights or treaty land entitlement interests. The SNN have long standing claims of Aboriginal rights and treaty rights throughout its territories that are a matter of public record and before the courts¹ and as a result Alberta has actual notice of its rights and interests asserted and being under negotiations with Alberta. Any determination or the potential impact that confines adverse effects to the reserve is patently incorrect at law.

¹ Statement of Claim 0301-19586 and Statement of Claim 06114544

b) Other Adverse Impacts

Further, Alberta incorrectly determined that the notice of potential adverse impacts to the SNN Section 35 Rights as well as the SNN community and membership were not sufficient for SNN to be considered directly affected by Fortress' application.

SNN provided both Fortress and Alberta directly with evidence of significant potential adverse impacts. Neither Fortress nor Alberta made any effort to understand SNN's concerns, did not consult or engage, and did not offer or implement any avoidance, mitigation, or accommodation measures to address our concerns.

Alberta dismissed our concerns without even talking with us directly. As noted by Ms. Myrmo in discussions with SNN's legal counsel, SNN's Notice of Appeal contains material concerns that are both of a *Constitutional* and more general nature.

None of SNN's concerns have been addressed in any way by either Fortress or Alberta and remain outstanding.

c) Onus

Alberta asserts that, in its October 10, 2019 letter, Alberta provided SNN with the link to an Alberta website where any potential decision would be posted.

Alberta did not:

1. Provide SNN with notice that it did not intend on providing notice of the ultimate decision; or
2. Provide SNN with notice of the potential date upon which a decision could be made. This is especially egregious as the decision was made on October 25, 2019, two weeks after communicating Alberta's position to SNN. It is reasonable to assume that, at the time of providing the October 10, 2019 letter to SNN, Alberta was already far along in its decision-making process.

The October 10, 2019 letter was not even received by SNN until October 28, 2019, after Alberta had made its decision and before SNN had an opportunity to internally review the October 10, 2019 letter and determine how best to proceed.

Alberta chose not to provide any indication to SNN that a decision was looming in the very near future. Alberta made its decision before SNN could be provided with Alberta's October 10, 2019 letter, and Alberta is attempting to conceal its illegal and poor conduct by barring SNN from exercising its legitimate interests in procedural fairness and protecting its legal rights.

Clearly, Alberta failed to provide SNN with even the most basic form of procedural fairness and the Board should take this into account in its determinations.

Alberta made the decision prior to SNN being provided with notice of Alberta's determinations contained in the October 10, 2019 letter.

Alberta breached its obligations to SNN under the duty to consult, the Honour of the Crown, and administrative law.

Alberta did not provide explicit notice that, in the opinion of Alberta, that the onus was shifting to SNN to apprise itself of any decision of Alberta. Alberta appears to be asserting that, in its opinion, it was reasonable to expect that SNN should check the Alberta website on a daily basis in order to remain informed of any decision made by Alberta throughout its whole treaty and traditional territories. This assertion and expectation is unreasonable and is not supportable at law.

Alberta maintained the onus to provide SNN with notice of its decision and failed to do so.

d) Balance

The argument of Alberta that SNN should have made extraordinary efforts to determine Alberta's actions without any notice or assistance from Alberta is absurd and must be viewed as such by the Board.

Upon learning of Alberta's decision, SNN made every effort to gather additional information, prepare the statement of concern, and to provide its statement of concern to the Board.

Speaking directly with Ms. Myrmo, SNN's legal counsel was assured that the 30 day period for providing the statement of concern starts running from the date that notice is provided, and that where notice is not provided, the period starts when SNN became aware of the decision.

In this instance, SNN's statement of concern was provided to the board within 30 days of SNN learning of Alberta's decision, in compliance with Ms. Myrmo's direction and the *Water Act*.

Alberta is alleging that SNN "chose to not obtain the decision in a timely manner." Alberta's assertion is absurd and is not supportable in law. Alberta owed SNN the obligation to provide notice of any decision; this is a basic premise of administrative law. Alberta's justification for not providing notice is flawed and the Board must review and confirm that Alberta's conduct was flawed and not supportable at law.

Alberta states that as of October 31, 2019, SNN could have become aware of the decision (had it been fastidiously checking the Alberta website). However SNN became aware of the decision on November 19, 2019; which is a short amount of time, particularly given the following:

- i. Alberta and failed to inform SNN that it would be required to find out all information moving forward;
- ii. Alberta did not inform SNN of its decision;
- iii. Fortress did not inform SNN of Alberta's decision; and
- iv. SNN only received Alberta's letter dated October 10, 2019 on October 28, 2019 (after Alberta had made its decision) and had minimal time to review, discuss and consider available options before becoming aware of Alberta's decision to approve Fortress' application.

Given the difficult circumstances created by Alberta, this time period is reasonable and any delay that may be caused will not result in any prejudice to Alberta or Fortress.

On a balance, all of Alberta's arguments must fail in relation to the serious concerns and interests of SNN.

2. Standing

Alberta asserts that SNN is not entitled to appeal. This argument of Alberta is illogical, inconsistent and must also fail.

Alberta correctly identifies that anyone who previously filed a statement of concern may seek appeal.

SNN submitted a statement of concern. On this basis, SNN is entitled to initiate an appeal.

Alberta then goes on to add additional requirements, which are not present in the *Water Act*, to create an argument that SNN should not have standing. Alberta asserts that section 109 of the *Water Act* should have the requirement that "validity" be read into the legislation.

"Validity" of a statement of concern is not written into the *Water Act* and is simply being inserted by Alberta in an effort to invent a grounds for denying SNN its legal rights.

SNN is directly affected by Alberta's decision. SNN filed a valid statement of concern. SNN has yet to be consulted or engaged by Alberta or Fortress. SNN's concerns have not been addressed by either Alberta or Fortress in any manner. To date, Alberta has made several fundamental errors of law that must be reviewed and corrected.

The following decisions and opinions of the Director are all incorrect and must be reviewed and corrected:

1. That SNN is not directly affected;
2. That the duty to consult was not triggered;
3. That SNN's statement of concern was not valid;
4. That SNN is not entitled to review Alberta's decision.

3. Board

The Board must act in a manner that is consistent with protecting the public interest. The threshold for reviewing decisions is low and must be broadly applied.

In this instance, the Board has already acknowledged that SNN has expressed concerns that are both of a *Constitutional* and *non-Constitutional* nature.

Alberta acknowledges that it failed to provide notice to SNN of its decision and is attempting to shift all responsibility to SNN without ever having provided SNN with notice of its intent to do so or providing even the most basic elements of procedural fairness. Alberta's conduct does not meet the standards set out in case law with respect to administrative law, the duty to consult, or the Honour of the Crown.

Alberta continues its deceptive conduct, including in its representations to the Board contained within the Alberta Letter. Alberta makes interpretations of the *Water Act* that are not supportable and should not be entertained by the Board at all. Alberta directly seeks to mislead the Board in an effort to prevent SNN from exercising its legal rights. This conduct is shameful and must be brought to light and addressed and corrected by the Board using the full scope of the legal remedies available to correct Alberta's poor conduct.

Due to all of the information provided to date by SNN the Board must proceed with the requested appeal. To not do so would bring the administration of justice into disrepute and would force SNN to pursue all other available legal recourse, resulting in further unnecessary delay and cost.

If you have any questions please do not hesitate to contact me.

Regards,

Signature: 

Dean Cherkas

cc: Denise Black, denise.black@gov.ab.ca
Mr. Thomas Heath, thomas.heath@skifortress.com
Ms. Lisa Semenchuk, lisa.semenchuk@gov.ab.ca
Ms. Shannon Keehn, Shannon.keehn@gov.ab.ca
SNN Chiefs
Ryan Robb
Malcolm Macpherson