

INTRODUCTION

This report constitutes Martin Ignasiak's review of Alberta Transportation's Springbank Project ("SR1").

Pursuant to the retainer agreement, dated April 30, 2019, Osler, Hoskin & Harcourt LLP is to provide legal advice to Alberta Transportation ("AT") as follows:

- (a) Conduct an independent review of SR1's current status in the regulatory process including providing an opinion on the regulatory steps remaining as well as potential timelines for completing the regulatory processes and associated Indigenous and stakeholder consultations, and land acquisition; and
- (b) Provide strategic advice to assist AT in advancing the Project on appropriate timelines.

Part I - Regulatory Process Overview and Procedural Steps provides the background of the project as well as a general overview of the provincial and federal regulatory processes including typical timelines. It then provides a history of how SR1 has advanced through each of the provincial and federal regulatory processes until present. My observations and comments on how the processes have unfolded to date are provided. Part I concludes by setting out the remaining regulatory steps as well as an expected time frame for completing the regulatory processes and the land acquisition.

Part II – Strategic Advice for Future Regulatory Steps provides the requested strategic advice to assist AT in advancing SR1 on appropriate timelines.

EXECUTIVE SUMMARY

During the course of preparing this report, I have reviewed numerous documents, including SR1 application materials, thousands of pages of submissions to regulators, hundreds of questions posed by regulators, and AT's responses to those questions. In addition, I have conducted interviews with various employees of AT, consultants working on SR1 and other individuals who have worked on SR1 over the past several years. It is important to stress that while I did receive and consider written submissions from both supporters and opponents of SR1, I did not meet with any of these stakeholders.

SR1 is unique in that:

- SR1 will result in the creation of new Crown lands as opposed to most projects that take up Crown land; and
- SR1 is not being carried out to allow for the recovery of some commodity but instead to manage river flows during rare emergency events.

In addition, it must be pointed out that AT does not typically carry out projects that are subject to the regulatory processes, and associated Indigenous and stakeholder engagement, that apply to SR1. These regulatory processes are today more challenging to navigate than ever before. Despite this, generally AT has developed and executed a well-planned and considered regulatory strategy. For example:

1. The current land acquisition strategy is to pursue negotiated land purchases until the required approvals are issued for SR1. At that time, expropriation proceedings under the *Expropriation Act* will be initiated to ensure that land acquisition does not delay the construction of SR1. The strategy proposed for land acquisition is entirely appropriate.
2. The consultants retained by AT and AT's employees on the SR1 team all possess valuable expertise within their particular areas of responsibility and are well-suited for their roles.
3. AT is well aware of its obligations as they pertain to Indigenous consultation and stakeholder engagement. This is important because carrying out these obligations effectively will be critical if SR1 is to succeed.
4. AT has developed a realistic regulatory plan to obtain the required regulatory approvals.

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

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

My advice to AT to minimize the likelihood of any further unanticipated delays is as follows:

1. Maintain a strong Project Lead and a Regulatory Lead, as part of a project leadership team, that is consistent in its composition and committed to SR1 until the requisite approvals are obtained.
2. AT and the Government of Alberta must ensure Indigenous consultation is carried out appropriately. It is evident that AT, its consultants and its internal and external legal counsel are fully aware of these requirements.
3. Recognize that any significant changes to SR1 as currently proposed and assessed will result in significant delay as compared to the timelines set out in Part I of this report.

In my view, continuing to maintain a strong Project Lead and Regulatory Lead, carrying out effective consultation, and recognition of the last recommendation above, as further detailed in this report, will allow AT to advance SR1 on appropriate and achievable timelines. Thank you for the opportunity to provide advice on SR1 and the regulatory processes associated with it.

PART I: REGULATORY PROCESS OVERVIEW AND PROCEDURAL STEPS

A. Background

As a result of the devastating floods that affected Southern Alberta in 2013, the Government of Alberta established the Southern Alberta Flood Recovery Task Force (“Task Force”). In October 2013, the Task Force contracted with AMEC Environment and Infrastructure to provide a flood mitigation feasibility study for the Bow, Elbow and Oldman river basins (“AMEC Report”).¹ On June 1, 2014, the Task Force released the AMEC Report, which recommended various flood mitigation including an earth-fill dam at McLean Creek (“MC1”) and SR1. The recommendation in the AMEC Report was to pursue both MC1 and SR1 concurrently until one project became the clear front-runner.

In May of 2015, Deltares, a Dutch environmental company, was contracted by Alberta Environment and Parks (“AEP”) to conduct an environmental comparison of SR1 and MC1 (“Deltares Report”). The Deltares Report concluded that SR1 was the superior project because of various costs and environmental measures, as well as the fact that SR1 included flood protection measures to be taken specifically for Bragg Creek and other upstream communities. The Deltares Report ultimately concluded that from an environmental point of view, SR1 leaves the river as a more natural system.² Subsequently, SR1 was determined to be the front-runner project.

SR1 is currently undergoing review by both the Government of Alberta, through AEP and the Natural Resources Conservation Board (“NRCB”), and the Government of Canada, through the Canadian Environmental Assessment Agency (“CEAA”). While there have been discussions regarding the complementarity of the two processes, in practice they have been entirely decoupled. As such and in essence, SR1 is undergoing two separate assessments: the provincial assessment under the AEP and NRCB, and the federal assessment under CEAA.

On June 14, 2019, AT filed its responses to numerous information requests posed by both provincial and federal regulators.

B. General Overview of the Regulatory Process

In this section, a high-level overview of the provincial and federal regulatory processes, as they apply to SR1, is provided. Each heading identifies a process step and in brackets provides a general timeline typically associated with that step.

(a) Provincial Process

Terms of Reference (3 months)

If a proponent’s proposed project requires an environmental impact assessment (“EIA”) under Alberta’s *Environmental Protection and Enhancement Act* (“EPEA”), the proponent must submit

¹ AMEC Environment & Infrastructure, “Southern Alberta Flood Recovery Task Force Flood Mitigation Measures for the Bow River, Elbow River and Oldman River Basins” (June 2014), Volume 2, 1 (“AMEC Report”).

² Deltares, “Review of two flood mitigation projects: Bragg Creek/Springbank off-stream flood storage and McLean Creek flood storage” (October 7, 2015), 1 (“Deltares Report”).

proposed terms of reference for the EIA to AEP. AEP must provide an opportunity for public comment on the proposed terms of reference and consider those comments before issuing the final terms of reference.

The NRCB coordinates with AEP and participates in the process of establishing the final terms of reference.

This step typically takes 3 months but can take longer, depending on the level of public consultation undertaken by the proponent and regulatory agencies.

Supplementary Information Requests (8 to 24 months)

Once the final terms of reference are released, it is up to the proponent to submit an EIA in conformity. Once submitted, provincial regulatory agencies and departments, including AEP and the NRCB, will conduct a technical review of the EIA and may issue supplementary information requests (“SIRs”) to the proponent. The purpose of the SIRs is to obtain further information they determine necessary for their review of the project.

SIRs are typically issued in rounds. Almost all projects are subject to at least one round of SIRs and most are subject to two rounds of SIRs. Some projects are subject to three rounds of SIRs. It is rare to exceed three rounds.

This phase introduces significant uncertainty in timelines. Timelines for this phase are influenced by the number of SIRs and the length of time the proponent requires to respond to the SIRs. The full SIR process typically takes anywhere from 8 months to 2 years.

EIA Deemed Complete and Notice of Application (3 to 5 months)

Once the proponent has responded to all of the SIRs, AEP will review the information and will make a determination that the EIA is complete. The NRCB, upon being advised by AEP that the EIA is complete, will issue a Notice of Application.

The Notice of Application will set out a process for persons who may be directly affected by the project, or who, in the NRCB’s view, have a *bona fide* interest in the matter, to file objections to the project. If there are objections to the project, the general practice is to proceed directly to a pre-hearing conference to consider preliminary matters prior to publishing a Notice of Hearing. The pre-hearing conference is held to address preliminary and procedural matters.

The NRCB typically requires 3 to 5 months to receive objections, make a determination on who will be participating in a hearing, and to hold a pre-hearing conference.

Hearing (3 to 6 months)

The NRCB will issue a Notice of Hearing setting out the hearing process. The hearing process is a quasi-judicial process meaning that there are substantive and procedural legal requirements to which the process must adhere. This process will allow for those objecting to the project to file submissions regarding the project, including expert reports. The proponent will sit a witness panel that every other party will be entitled to cross-examine under oath. After the proponent’s witness panel is cross-examined, it will be questioned by NRCB legal counsel and the NRCB Members. Every party objecting will then have an opportunity to seat its own witness panel. The

proponent may then cross-examine each intervener witness panel. Each witness panel may also be questioned by the NRCB's legal counsel and Members. All parties will present final arguments at the conclusion of the hearing.

The hearing phase is almost always the most intense, busy and expensive (on a per-day basis) aspect of the regulatory process. A proponent must dedicate significant resources to hearing preparation if the proponent is to be successful at the hearing. This includes conducting mock-hearing sessions where the proponent's officials and consultants practice responding to cross-examination questions. During this time, the proponent and its consultants are concurrently responding to the written interventions filed by various interveners.

This phase typically takes 3 to 6 months, depending on the length of notice the NRCB gives in advance of the hearing. The hearing itself typically takes from less than a week to a month.

NRCB Report (3 to 4 months)

After the hearing, the NRCB will review all the evidence and argument presented at the hearing and issue a decision report. This report will provide background information on the project, review the positions of the parties, explain the NRCB's conclusions on each of the issues before it, and set out its disposition of the application. If the application is approved, any proposed terms and conditions imposed by the NRCB are stated in the decision report.

The time required for the NRCB to release its report depends on the length and complexity of the hearing. Typically, the NRCB's report is issued within 3 to 4 months from the end of the hearing.

Cabinet Decision (2 weeks to 2 months)

Before the NRCB may grant an approval for the project, the Lieutenant Governor in Council must authorize the NRCB to grant the approval through an Order-in-Council. This step is often referred to as the Government of Alberta's public interest decision. For most projects, this step typically takes several weeks to 2 months.

NRCB and AEP Approval (2 weeks to 3 months)

Once the Order-in-Council has been issued by the Lieutenant Governor in Council, AEP and the NRCB will issue the required regulatory approvals thus allowing the project to proceed. The NRCB approval should be issued within weeks of the Order-in-Council being issued. The required *Water Act* approvals may take up to 3 months.

(b) Federal Process

Project Description Phase (2 months)

Project proponents during this phase submit a Summary of the Project Description. Once a Project Description has been submitted, CEAA will invite public comments on the Summary of the Project Description. This includes comments from interested parties, Indigenous groups and federal departments.

Once CEAA has had an opportunity to consider the submitted public comments, it will make a determination as to whether an Environmental Assessment ("EA") is required. CEAA will also

determine at this stage whether the EA will be conducted by the agency or through panel review. EA's conducted by agency review are typically completed in a shorter timeframe as compared to EA's reviewed by a panel.

Submission of Project Description to Determination of EA typically takes roughly 2 months.

EIS Guidelines Phase (1.5 to 2 months)

If CEAA determines that an EA is necessary, it will publish its Draft Environmental Impact Statement ("EIS") Guidelines.³ The EIS Guidelines determine what the proponent will need to include in their EIS. CEAA will allow public comments on the Draft EIS Guidelines. Once CEAA has considered the comments, it will release its final EIS Guidelines.

Determination of EA to release of the final EIS Guidelines typically takes 1.5 to 2 months.

EIS Conformity Phase (1 to 12 months)

Once the proponent submits its EIS, CEAA will conduct a conformity review in order to determine whether the EIS is in conformity with the EIS Guidelines. It is not uncommon for CEAA to determine that the EIS is not in conformity, in which case CEAA will identify the deficiencies the proponent must address. In some cases, CEAA will reject the EIS and request that a revised EIS be submitted.

If no deficiencies are identified, CEAA typically completes its conformity review in 1 to 2 months. If deficiencies are identified, the timeframe for this step can vary widely depending on how long it takes the proponent to address the deficiencies or re-submit a revised EIS. If a new EIS is required, this step can take up to 12 months or longer.

Information Request Phase (2 to 8 months)

CEAA will typically concurrently announce conformity of the EIS and commencement of the public comment period on the EIS. This will include comments from individuals, interested parties, Indigenous groups and federal departments. This stage constitutes the technical review of the EIS.

CEAA will review the submitted comments and will typically request additional information from the proponent. Similar to the provincial process, additional information requests will be issued in rounds of SIRs. There is almost always one round of SIRs issued by CEAA, often two rounds and in some cases three or more rounds. Each time the proponent submits an answer to the SIRs, a new public comment period is initiated and CEAA will determine if additional SIR are required after taking into account the public comments.

³ We refer to environmental impact assessment or EIA and in other cases to an environmental impact statement or EIS. The EIA is the common term used in the provincial regime whereas the EIS is the common term used in the federal regime. In many ways, they are essentially the same thing although the technical information requirements may differ. In joint reviews, a single document is usually filed to meet both the provincial and federal requirements. The terms are used interchangeably herein.

This phase introduces significant uncertainty in timelines. Timelines for this phase are influenced by the number of SIRs and the length of time the proponent requires to respond to the SIRs. From the announcement inviting public comments on the completed EIS to the end of the SIR period for projects undergoing CEAA review (therefore excluding review panel processes) this phase can take from 2 months (if no public comments are received and no SIRs are required) to 8 months. Very few projects reviewed by CEAA have more than 2 rounds of SIRs.

CEAA EA Report (3 to 5 months)

Once CEAA has all the information it requires, it will draft its EA Report. CEAA will then publish the Draft EA Report, along with potential conditions to be recommended to the Minister of Environment and Climate Change Canada (“Federal Minister”) for final decision. CEAA will invite public comments on the Draft EA Report and further consult with Indigenous groups on it. The public comment period is typically one month.

After the public comment period closes, CEAA will draft the Final EA Report for submission to the Federal Minister. The amount of time required between the end of the SIR phase and the end of the public comment period on the Draft EA Report to the Federal Minister is typically 3 to 5 months.

Decision Statement by Federal Minister (3 months)

The Final EA Report is typically released along with the Decision Statement by the Federal Minister. The Decision Statement by the Minister will determine whether the project is likely to cause significant adverse effects. The Decision Statement will also include any relevant conditions to be applied and fulfilled by the project. From the end of the public comment period of the Draft EA Report to release of the Decision Statement by the Federal Minister typically requires 3 months.

Federal Authorizations (2 to 3 months)

Federal departments and agencies may issue any required federal authorizations (*Fisheries Act* and *Navigation Protection Act*) required for the project to proceed anytime after the Federal Minister issues a positive Decision Statement. This step typically takes 2 to 3 months.

C. History of the SR1 Regulatory Review

(a) Provincial Process

On July 11, 2014, AT submitted the Project Summary Table to Environment and Sustainable Resource Development (“ESRD”), now AEP. On July 17, 2014, AT submitted its proposed Terms of Reference for the EIA.

On October 1, 2014, ESRD announced that SR1 required an EIA under EPEA and therefore referred the process to the NRCB. On February 5, 2015, the ERSD released its final terms of reference for the EIA.

In October of 2017, AT submitted the SR1 EIA to AEP and the NRCB. On November 16, 2017, AT was informed by AEP that the Human Health Risk Assessment (“HHRA”) submitted with the EIA does not conform to the standard guidance and therefore a detailed technical review is

not possible until the HHRA is revised and resubmitted. AT filed the revised EIA in March of 2018.

On July 28, 2018, AEP and the NRCB jointly issued the first round of SIRs (“SIR #1”). SIR #1 contained 593 information requests, with several sub-questions. The majority of the questions relate to environmental issues. The remaining topics include: engineering; engagement and consultation; socio-economics; alternative projects; and AT specific questions.

On June 14, 2019, AT responded to SIR #1.

(b) Federal Process

On April 18, 2016, AT submitted the SR1 Project Description to CEAA. On May 9, 2016, CEAA announced a public comment period regarding the Project Description. The original deadline set for public comments was May 30, 2016. During this period, 364 public comments were submitted. It should be noted that of the 364 public comments, roughly 155 public comments followed a template (form letters) and were likely generated as part of an internet campaign. 24 of the public comments were filed after the deadline, including up to June 22, 2016. CEAA did not issue an official extension of the deadline.

On June 23, 2016, CEAA determined that an environmental assessment was necessary and also released and invited public comments on its Draft EIS Guidelines. The deadline for written comments was July 25, 2016. Similar to the Project Description phase however, public comments including from the Department of Fisheries and Oceans Canada (“DFO”) were submitted up to and including August 3, 2016. Again, CEAA did not announce an official deadline extension. Unlike in the previous stage, CEAA did not address whether these late comments were taken into consideration. The Final EIS Guidelines were released on August 10, 2016.⁴

On February 24, 2017, CEAA announced that federal funding was available to the public and Indigenous groups to assist in their participation in the EA process.⁵ CEAA may decide to provide additional participant funding in the future. CEAA allocated a total of \$930,048.05 to a number of Indigenous groups and several individuals.⁶ The following Indigenous groups have been awarded federal participant funding:

Indigenous Group	Amount Allocated
Blood Tribe First Nation	\$79,150
Ermineskin Cree Nation	\$79,650
Foothills Ojibway First Nation	\$12,100
Ktunaxa Nation Council	\$42,068.05
Louis Bull Tribe	\$79,650
Metis Nation British Columbia	\$12,100
Metis Nation of Alberta – Region 3	\$66,140

⁴ CEAA Doc #10.

⁵ CEAA Doc #11.

⁶ CEAA Doc #27.

Montana First Nation	\$79,650
Piikani First Nation	\$79,650
Samson Cree Nation	\$79,650
Shuswap Indian Band	\$12,100
Siksika Nation	\$79,650
Stoney Nakoda Nations	\$112,150
Tsuut'ina Nation	\$79,650

Additionally, the following individuals were awarded participant funding:

Individual	Amount Allocated
Brian J. Copithorne	\$12,090
John Rodger Robinson	\$12,300
Ryan Robinson	\$12,300

Separate from the CEAA process, a group of individuals launched a judicial review of CEAA's decision to not refer the environmental assessment to panel review in 2016. The Court found that because it was CEAA that decided not to refer the matter to a review panel, not the Minister, the Minister failed to properly exercise her discretion in deciding not to refer the EA to a review panel. The court remitted the decision back to the Minister for her to personally redetermine whether the assessment should be conducted by a review panel. The Minister ultimately decided (again) not to refer the EA to panel review (August 8, 2017). This introduced uncertainty into the process that took time to address.

On October 17, 2017, AT submitted its EIS to CEAA for compliance review. On November 16, 2017, CEAA notified AT that the EIS was not in conformity with the EIS Guidelines and required a new EIS be submitted. The specific deficiencies found by CEAA were submitted to AT in its Annex 1.

Deficiencies noted by CEAA included that the EIS summary lacked sufficient detail as required by the Final EIA Guidelines and as exemplified in EIS Summaries for past projects; a lack of a well referenced CEAA concordance table which cross references the information provided in the EIS with the information required in the EIS Guidelines;⁷ and a lack of discussion on Indigenous traditional territories as specified in the EIS Guidelines.⁸

On December 19, 2017, CEAA further provided its comments on preliminary technical deficiencies that could evolve into SIRs later in the process ("Annex 2"). While Annex 2 deficiencies did not need to be addressed in the re-submitted EIS, CEAA recommended that doing so would expedite the process and preempt the need for potential future SIRs.

On March 29, 2018, AT submitted a revised EIS based on CEAA Annexes 1 and 2. While not all Annex 2 deficiencies were addressed, AT did modify some of its updated EIS based on select points made in Annex 2.

⁷ Annex 1, Deficiency 2.

⁸ Annex 1, Deficiency 11.

On April 30, 2018, CEAA announced that the EIS was in conformity with the EIS Guidelines, and welcomed public comments for its first round of SIRs. The official deadline for any such public comments was May 31, 2018. On May 17, 2018 CEAA subsequently extended the deadline for public comments to June 15, 2018 for unstated reasons. While the deadline was extended to June 15, 2018, several groups and individuals submitted comments up to and including June 28, 2018. This includes comments from Natural Resources Canada (“NRCan”) and Environment and Climate Change Canada (“ECCC”). It is unclear whether these comments were taken into account.

Several hundred public comments were once again submitted on the updated EIS. This includes comments from federal departments such as DFO, Health Canada, Transport Canada, ECCC, and NRCan. Comments were also received from a number of Indigenous groups.

CEAA took all public comments into account when issuing its SIR #1. CEAA’s SIR #1 Part 1 was issued on June 28, 2018. CEAA then issued its SIR #1 Part 2 on August 20, 2018, and SIR #1 Part 3 on August 31, 2018. On June 14, 2019, AT responded to all the federal SIRs.

Independent Reviewer Observations and Comments

In my view, the requirement to resubmit the EIA resulted in a delay of the regulatory process by approximately 6 months. This delay is attributable in large part to the federal process and the CEAA determination of deficiency. However, even absent the federal deficiency determination, AEP’s requirement that the HHRA be revised and resubmitted likely would have caused 2 to 3 months of regulatory delay. The original EIS submitted by AT was more focused on the provincial terms of reference than the Final EIS Guidelines. That said, these information requirements could have been addressed through the SIR process. Finally, I note that Stantec advised AT not to file the EIS in October of 2017 on the basis that there was insufficient time to incorporate necessary information in the EIS and it would likely be rejected by CEAA. I understand external legal counsel also expressed concerns that the EIS was not ready to be filed. I am not aware of who made the decision to file the EIS despite these warnings, or why.

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

Regulatory agencies often claim that if an application is done properly and meets the information requirements set out in the terms of reference, there will be relatively few information requests. In my experience this is rarely true. Those assigned to review project applications and issue information requests will almost always do so regardless of the quality of the application. That said, there is no doubt that a number of the information requests in SIR #1 are required and

appropriate. There are many that attempt to clarify contradictions that exist in the EIA and seek information that ought to have been included in the EIA. This is not unusual. Therefore, while I remain of the opinion that there are a number of information requests that should not have been included in SIR #1, given the content of the EIA, I am of the view that SIR #1 likely would have consisted of approximately 250 questions in any event.

As demonstrated by CEAA's Information Request Package 2 ("CEAA Package 2"), issued in August of 2018, the evolution of Indigenous consultation in regulatory processes presented a challenge for AT. Package 2 was issued by CEAA as part of its mandate to assist the Crown (federal) with fulfilling its duty to consult and inform its assessment of potential impacts on the exercise of Aboriginal or treaty rights. It required that AT engage with each Indigenous group identified in the EIS Guidelines and gather the required information and discuss outstanding concerns. CEAA was directing AT to support and facilitate the participation of Indigenous groups in the review process. This presented a unique challenge because AT has not in recent years been required to engage in the manner of consultation now required in connection with the regulatory review of SR1. There has been considerable evolution in the manner in which Indigenous consultation is undertaken. In addition, SR1 is unique in that unlike most major projects which take up Crown lands, SR1 will result in the creation of new Crown lands. As a result, AT and the Government of Alberta were required to carefully assess how to carry out further consultation with Indigenous groups so that Package 2 could be responded to. The importance and complexity of this issue was further exacerbated by the Federal Court of Appeal's decision on the Trans Mountain Project which was issued on August 30, 2018.⁹

D. Remaining Regulatory Steps and Schedule

Presently, both CEAA and AEP/NRCB are reviewing AT's responses to the SIRs. Taking this into account, my view as to a reasonable schedule for each of the remaining provincial and federal processes is set out in the tables below.

Provincial (AEP & NRCB)			
Step	Comments	Length	Estimated Timeline
Responding to SIRs	Responses to SIR #1 have been submitted in mid-June 2019; and we assume: AEP will take 4 months to review the responses and issue SIR #2 (mid-October); responses to	10 months	April 2020

⁹ *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153

	SIR #2 will be submitted within 3 months of receipt (mid-February); if there is a third round, they will be issued by AEP and responded to within 3 months.		
EIA Deemed Complete by AEP and NRCB Notice of Application	This includes three weeks for AEP to review the final round of SIRs and to advise the NRCB the EIA is complete. The NRCB will issue a Notice of Application with a 30 day period for filing objections, and will then schedule and hold a pre-hearing meeting. We have added an additional month to take into account this occurs over the summer months thereby creating scheduling issues.	5 months	September 2020
Notice of Hearing	NRCB will issue a Notice of Hearing. We assume a 45 day notice before parties must file hearing submissions and 2.5 months' notice prior to the hearing.	2.5 months	December 2020
Hearing	Assume a 3 week hearing.	3 weeks	early to mid-December 2020
NRCB Report	In my view given the nature of SR1, this step should not take 3 months and should instead take 2 months or less. However, given the Christmas holiday and that NRCB published guidance suggest this can take up to 4 months, I have assumed 3 months.	3 months	March 2021
Order-in-Council	Cabinet formally authorizes NRCB to issue approval.	2 months	May 2021
NRCB and AEP Approvals	AEP will consider and issue any remaining approvals	2 months	July 2021

Federal (CEAA)			
Step	Comments	Length	Estimated Timeline
Responding to SIRs	Responses to SIRs have been submitted in mid-June 2019; and we assume: CEAA will take 3 months to review the responses and issue an additional round of SIRs (mid-September); responses to these SIRs will be submitted 3 months after. We assume a further 4 months to receive and respond to the final round. We note that this would be a significant amount of federal SIRs compared to previous CEAA reviews for other projects. This likely results from the significant number of public comments submitted to CEAA as part of the organized opposition to SR1.	10 months	April 2020
Draft EA Report, Public Comment Period, and Final EA Report	Assumes 2 months to prepare draft EA, 30 day public comment period and another 2 months to finalize and provide to Federal Minister.	5 months	September 2020
Decision Statement by Federal Minister	Usually, additional Indigenous consultation is undertaken as part of this step.	3 months	December 2020
<i>Fisheries Act</i> and <i>Navigation Protection Act</i> Authorizations	We have allowed 3 months for finalization of these authorizations.	3 months	March 2021

The timelines are reasonable and achievable, consistent with our review of other comparable regulatory proceedings. Although the above timelines are achievable, I recommend AT exercise caution when publicly discussing its anticipated timelines for regulatory approval. First,

opponents of projects understand that creating delay is one of the most effective ways of stopping projects. Announcing definitive milestone dates establishes targets for opponents. Second, in some cases regulators are offended or view it as inappropriate when proponents opine on when a regulator should complete certain processes by.

E. Land Acquisition

The current strategy is to pursue negotiated land purchases until an Order-in-Council and NRCB approval is issued for SR1. At that time, expropriation proceedings under the *Expropriation Act* will be initiated to ensure that land acquisition does not delay the construction of SR1. The strategy proposed for land acquisition is entirely appropriate.

PART II: STRATEGIC ADVICE FOR FUTURE REGULATORY STEPS

This Part II provides strategic advice regarding steps for AT to implement in order to facilitate obtaining the necessary approvals for SR1 on the timelines set out in Part I of this report.

A. Project Management

(a) Introduction

Historically, a project such as SR1 would be developed by engineers and others with the requisite flood-mitigation expertise. This team would then obtain the necessary regulatory approvals required for the project to proceed. However, this approach fails to recognize that regulatory processes have become complex and multifaceted. The traditional approach will not result in success. Major projects, if they are to be successfully navigated through the regulatory process, now require that the project be navigated by a team with an in-depth understanding of not only the engineering and environmental disciplines, but also the regulatory processes themselves, including how to carry out effective Indigenous and non-Indigenous engagement. For example, pipeline companies historically tasked construction experts with identifying potential pipeline routes and once a route was determined, the requisite approvals were sought. Today, many pipeline companies first assign regulatory experts and experts in Indigenous relations to identify potential pipeline routes. Only after they have identified potential routes are the construction experts brought in to assess the feasibility of those routes. Put another way, designing a good project does not guarantee regulatory success.

In addition, while a proponent will typically retain environmental, engineering and legal consultants to assist with obtaining the required regulatory approvals, to be successful it is critical that the proponent continue to actively manage and direct the regulatory strategy and execution. Although AT has for the most part actively managed and directed the regulatory strategy and execution, there have been a number of personnel changes at AT during the regulatory process. Regulatory processes have become much more complicated and in the case of major projects such as SR1, consistent leadership is required. AT recognized this in May of 2018 when a new Assistant Deputy Minister was assigned to SR1 in 2018. This resulted in a warranted shift in strategy that resulted in more effective Indigenous and stakeholder consultation as well as better management of the internal and external members of the SR1 Project team.

A project such as SR1 necessitates that a proponent consider a much wider scope of issues. Land use, accommodation of Indigenous concerns, land acquisition and sophisticated opponents to the project mean that the proponent will be pressed to make commitments that are much more complicated and multifaceted than on-site mitigation measures. Before a proponent can commit to these sort of measures, it must carefully assess the precedent that is being created and its ability to deliver on these commitments. Often, these commitments may require approval from other departments and as such, must be carefully considered and approved by the most senior decision makers. In the Government of Alberta, this will include Deputy Ministers and Ministers

of AT, AEP and potentially the Alberta Cabinet.¹⁰ The nature of these issues required that they be considered at the highest levels of the organization, just like they would be if the proponent were a private company. These commitments will bind the Government of Alberta, and not just AT, for many years.

(b) Project Lead

During the course of my interviews with those working on SR1, including with the various consultants, AT employees and other Government of Alberta employees, it emerged that there has not been a person who, on a consistent basis, is viewed as the leader of SR1 ultimately responsible for its success. To successfully navigate the regulatory process and to carry out effective Indigenous consultation and stakeholder engagement, there must be continuity within the leadership team responsible for SR1.

To be clear, this is not a reflection on the competence or abilities of any of the individuals working on SR1. To the contrary, all of the consultants and employees appear to possess valuable expertise within their particular areas of responsibility. All of them clearly want to see SR1 succeed. I came across nothing in my review of SR1 that suggested any carelessness on the part of any individual or that any aspect of SR1's design is problematic.

Navigating a major project through today's regulatory processes requires one individual who is responsible for all of the following (the "Project Lead"):¹¹

1. Delivering the project approvals on budget and on schedule;
2. Coordinating and managing the engineering lead, Indigenous engagement lead, environmental lead, stakeholder engagement lead, regulatory lead, and land acquisition lead. This includes:
 - a. working with the engineering lead and environmental lead to identify potential mitigation measures that are acceptable to the proponent and that can be implemented to help address Indigenous, stakeholder or regulators' concerns;
 - b. ensuring that no one is making commitments to Indigenous groups, stakeholders or regulators that will impede or prevent the successful construction or operation of the project on schedule and on budget;
 - c. working with legal and the Indigenous engagement team to ensure that the proponent's and Crown's obligations to engage or consult are met; and

¹⁰ These types of commitments that establish precedent and require coordination among various parties, therefore requiring approval from the highest levels within the organization and sometimes other organizations, are not restricted to projects advanced by government. Industry proponents face the same challenge and have in the past made commitments that must first be approved by the Chief Executive Officer and in some cases the Board of Directors. Sometimes several industry players, such as in the oil sands, work together to make commitments.

¹¹ In this report I use the term "lead". Often the position is referred to as Project Manager or Director. Different companies use different titles. I've simply used "lead" recognizing that within government some titles such as "lead", "manager", or "director" are perceived very differently than in industry companies.

- d. working with the regulatory lead to ensure that all regulatory requirements necessary to obtain the project approvals are met and that all filings are consistent with the proponent's design, environmental and other commitments.
3. Represent himself or herself as the champion of the project throughout the regulatory processes including during the NRCB hearing. During the NRCB hearing, this individual will be expected to have the authority to make commitments on behalf of the proponent and to be accountable for all aspects of the project. This individual will be the "chair" or "quarterback" of the proponent's witness panel and as such will set the tone of the panel and determine who answers what questions and when.
4. In many cases, this individual is also the public face of the project dealing with media inquiries and also representing the proponent in key stakeholder and Indigenous meetings.

Therefore, the Project Lead must: have senior decision-making power on behalf of the proponent; be an effective speaker in various settings (at a hearing, in meetings with Indigenous groups and potentially in the media); confident; and a strategic thinker. Alberta regulators have previously expressed concern when a proponent fails to put forward an individual with sufficient authority. The then Alberta Energy and Utilities Board stated:¹²

The Board was pleased to see that the parties were able to establish a cooperative agreement to address the concerns expressed by the interveners. However, the Board was disappointed that the senior Imperial staff referred to in the agreement did not participate in the hearing and provide the Board and the interveners with the opportunity to question them on their commitment to the agreement. The Board was also disappointed to find out that the most senior Imperial official identified in the conflict resolution section may not even be aware of the existence of the agreement or his role in the conflict resolution process.

The Board notes that much of the distrust expressed toward Imperial relates to an apparent breakdown in the fulfillment of commitments when those commitments are taken to Imperial's head office in Calgary for confirmation. The Board believes that a senior staff member should have appeared at the hearing to speak directly to the company's commitment to the agreement and the measures that have been put in place to resolve the operational matters in a timely fashion. In this case the appropriate person may have been the one holding the position identified as the last point of contact in the conflict resolution procedure or another senior executive member. The Board expects senior management (decision makers) to take an active role in the hearing process and believes that especially in this case, it would have resulted in a significant step forward in resolving the trust issues between the parties.

¹² EUB Decision 2006-037 (May 2, 2006) at page 7.

It should be noted that most major projects successfully advanced through regulatory processes have been championed by very senior individuals within the proponent's organizational structure. This is the case for several reasons. First, the individual must have the authority to direct the day-to-day work of all the employees and consultants working on the project, including Indigenous and non-Indigenous engagement teams, engineering, environmental, land and legal. Second, the person must have direct and quick access to the most senior leadership, which in this case is the Deputy Minister, and when necessary, the Minister. This is because to successfully navigate the regulatory process, a proponent must show that it has taken into account, and has attempted to address, the concerns that have been expressed. This means that the individual must be able to offer commitments that may include, but not be limited to, additional environmental and construction monitoring, notification procedures and on-going consultation through life-of-project, stakeholder access to land and other resources, financial settlements, and contracting and employment opportunities. In the vast majority of cases, this position is a full-time job.

(c) Regulatory Lead

The Regulatory Lead is usually responsible for managing all regulatory filings. This includes ensuring that all regulatory requirements are met and are consistent with the proponent's objectives for the project. The Regulatory Lead manages all of the various environmental consultants to make sure that internal timelines are being met and quality control is achieved. The Regulatory Lead liaises with the Project Lead to make sure that the environmental consultants have all the necessary information required regarding the project to properly carry out their tasks.

(d) Conclusion

The two positions discussed above, Project Lead and Regulatory Lead, are most critical at this stage of the regulatory process if SR1 is to succeed. It is recommended that a Project Team ("PT") be formed to navigate SR1 through the remainder of the regulatory process. The PT usually consists of between 6 and 10 people including the Project Lead, Regulatory Lead, Legal, Environmental (proponent employee who understands the proponent's environmental practices and policies), Engineering, Stakeholder and Indigenous Engagement.¹³ In the case of SR1, I recommend land acquisition also be represented. Every proponent organizes itself differently at different stages of the regulatory process. However, a consistent element in almost every successful case is a strong Project Lead and a Regulatory Lead and a leadership team that is consistent in its composition and committed to the project until the requisite approvals are obtained.

¹³ It should be noted that in some cases Indigenous engagement is conducted by a team different than the one responsible for stakeholder engagement. Often they are combined. It is also common for the Project Lead to undertake the role of Indigenous and stakeholder engagement, with support from others. There are various ways to structure this aspect of the PT, all of which can lead to success. Also, I recommend the PT have dedicated administrative support to take minutes and ensure everyone is aware of their deliverables.

B. Project Updates and Alternatives

MC1 has been advanced by those opposed to the SR1 as a better alternative to SR1. There has been extensive consideration given to the merits of both MC1 and SR1 in the AMEC Report and the Deltares Report. This report does not investigate or assess the merits of MC1. However, it is certain that if AT determines it will now pursue MC1, or if AT makes other significant changes to SR1, the timelines referred to earlier will not be met and the flood mitigation SR1 is intended to provide will be delayed by anywhere from 3 to 8 years or more.

In my experience, and without fail, significant changes to a project during the regulatory process results in years of regulatory delay because new baseline information, new modelling and significant updates are required to all the regulatory filings. In some cases, regulators will consider the scope of changes, terminate the regulatory review and require a new application, thereby restarting the entire process from the beginning.

In addition, the federal government has tabled Bill C-69: *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. If SR1 is significantly amended or MC1 is pursued, the federal review process will likely start again and potentially be subject to Bill C-69, if passed.

In my view, even if MC1 were not subject to federal EA review, preparing a new application for MC1, applying for and obtaining the necessary provincial approvals will take at least 3 years and more likely 4 or 5 years. Any significant changes to SR1 as currently proposed and assessed will result in significant delay as compared to the timelines set out in Part I of this report.

C. Indigenous Engagement

From an Indigenous rights perspective, SR1 is a unique project. Unlike almost all other projects I have worked on, SR1 will result in the creation of new Crown lands. Almost every other project I have assisted with results in Crown lands being closed to the public for the purposes of allowing mining activities or other industrial infrastructure. In addition, SR1 is not being carried out to allow for the recovery of some commodity but instead to manage river flows during rare emergency events during which it is dangerous to carry out any traditional activities near the river.

I recommend that AT and the Government of Alberta ensure Indigenous consultation is carried out appropriately. It is evident that AT, its consultants and its internal and external legal counsel are fully aware of these requirements. I have no further recommendations for AT in this regard.

CONCLUSION

Thank you for the opportunity to provide advice on SR1 and the regulatory processes associated with it.