

Vacation Alberta Corporation

EXPANSION OF AN EXISTING RECREATIONAL
AND TOURISM FACILITY IN THE PINCHER CREEK AREA
- APPLICATION NO. 9201

Report of Pre-Hearing
Meeting March 30, 1993

1. INTRODUCTION

The Natural Resources Conservation Board Act (the Act) was proclaimed into law on June 3, 1991. It created a Board "...to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment." The Act specifies certain types of projects that are subject to review and prohibits the commencement of a reviewable project unless the Natural Resources Conservation Board (NRCB), on application, has granted an approval for the project. Included in the Act as projects requiring approval are recreational or tourism projects "...to construct one or more facilities for recreational or tourism purposes for which an environmental impact assessment has been ordered".

Vacation Alberta Corporation (Vacation Alberta or the Applicant) proposes to expand the existing Westcastle Park ski area southwest of Pincher Creek into a four-season vacation resort. The proposed expansion would include two 18-hole golf courses, an expanded ski area and services, two hotels and related services, condominiums, rental accommodation and recreational vehicle facilities. On March 5, 1990, Vacation Alberta was ordered under section 8(1) of the Land Surface Conservation and Reclamation Act to prepare an environmental impact assessment (EIA) for the project.

Vacation Alberta filed an Application with the NRCB for approval of the project on December 11, 1992. On February 9, 1993, the NRCB sent a deficiency letter to Vacation Alberta identifying additional material required to complete the Application. That deficiency letter was prepared following independent review of the Application by NRCB staff and Alberta Environmental Protection and other interested federal and provincial government departments.

The Board held a public pre-hearing meeting at the Heritage Inn in Pincher Creek, Alberta, on March 30, 1993 to hear representations respecting certain aspects of the hearing to be held to consider the Application. Those individuals and organizations that attended and participated in the meeting are listed in Appendix A.

The agenda items for the meeting were as follows:

1. The NRCB application review process.

2. The Role of Alberta Environmental Protection with respect to the Westcastle Project.
3. The appropriate location and timing of the hearing and deadlines for filing submissions.
4. Requests from potential interveners to be considered as eligible to receive intervener funding and requests for advance funding. (Appendix B lists those parties requesting funds and the requested amounts).

Items 1 and 2 were primarily for information purposes. This report presents the Board's conclusions respecting certain of the matters considered at the meeting. It does not include in detail all the views presented by participants in the meeting, but the Board had regard for those views in reaching its conclusions. A transcript of the meeting is available for review at the Board's offices.

2. THE LOCATION AND TIMING OF THE HEARING

Among the participants who expressed a preference with respect to the timing of the public hearing, many preferred June while others wanted a fall hearing. The Applicant indicated that a fall hearing would expose the company to additional costs and could jeopardize the continued operation of the existing ski hill.

In the Applicant's opinion, six weeks should be sufficient time for participants to prepare for the hearing. Participants who supported a fall hearing observed that the Application had not been available to them until recently and that a fall hearing date would allow time to conduct hydrological and ethnographic field studies.

Participants also expressed their views on the matter of a date for filing written submissions to the NRCB prior to the hearing. Deadlines suggested ranged from one to two weeks prior to the hearing. In addition to the hearing and submission dates, a number of participants requested that some portion of the hearing be held in the afternoons and evenings to accommodate those with daytime commitments.

As to the location of the hearing, the Applicant and many participants indicated that the Town of Pincher Creek would be the appropriate location. Mr. Murray Pritchard, representing the Westcastle Ski Patrol, summed up the argument in favour of Pincher Creek:

"As far as location, the skiing public and the general public in southern Alberta are those who are most likely affected by this proposal. We are concerned as to the ability not only to be represented at the hearings, but also to attend the hearings and to be able to hear the comments made to ensure that the decision that eventually comes from this Board is understood and that the information that has come before the Board is understood."

Other participants suggested that at least part of the hearing should be held in Calgary because the disposition of public lands, fisheries and water are of concern to all Albertans and because the cost for the appearance of expert witnesses would be reduced.

The Board believes that, where possible, a hearing should take place in the region in which a

proposed project would be located, so that those persons most likely to be directly affected by a project would be provided with the maximum opportunity to participate. In the case of the application by Vacation Alberta, the Board agrees that the Town of Pincher Creek is the proper location for the hearing. The Board is confident that suitable arrangements can be made for hearing facilities. In general the Board does not believe that holding hearings in more than one location for a single project would be an efficient procedure. In the Board's judgement splitting the venue is not appropriate for the hearing of the Vacation Alberta Application.

In reaching a decision on the timing for the public hearing, the Board had regard for the public process followed in establishing the terms of reference for the EIA and preparing the Application. The Board also took into account the facts that the Application was filed on December 11, 1992 and has been available since then, and that the Applicant's supplemental information was filed on March 22, 1993. The Board's decision is that the hearing will be held at the Heritage Inn in Pincher Creek commencing on June 7, 1993. Written submissions of interveners should be filed with the Board not later than May 27, 1993. The Board will incorporate afternoon and evening sessions into the hearing schedule which will be announced at the opening of the hearing.

3. ELIGIBILITY FOR FUNDING OF THOSE MAKING REQUESTS

This section of the Report summarizes the views of the Applicant and interveners with respect to the eligibility of those requesting funds, reports the Board's conclusions about eligibility and outlines the Board's reasons for decision.

The Board wishes to emphasize that its decisions set out in this section refer to the eligibility of interveners for funding. They do not in any way deal with the standing of interveners to appear at a hearing, to present evidence and to question other participants. In the opinion of the Board members of the public, or groups of members of the public, wishing to provide evidence about an application before the Board or to ask questions of other participants are entitled to do so. This can be accomplished by registering and participating in the public hearing. Having standing and participating in the Board's review of an application does not mean that a party would be automatically entitled to an award of costs.

3.1 Views of the Participants

The organizations and individuals participating in the meeting have been identified in Appendix A. Not all of the participants in the meeting applied to the Board for an award of costs. Those that did apply for funding are listed in Appendix B and are as follows:

- C West Castle Ecosystem Coalition
- C Trappers & Outfitters Wilderness Coalition
- C Ms. Judy Huntley
- C Ms. Sybille Manneschmidt

West Castle Ecosystem Coalition (WCEC)

The West Castle Ecosystem Coalition consists of a number of individuals and the following organized groups: the Castle-Crown Wilderness Coalition ("Castle Crown"), the Canadian Parks and Wilderness Society (Alberta) ("CPAWS"), Trout Unlimited (Canada) and the Crowsnest River Chapter of Trout Unlimited, and the Alberta Fish & Game Association Southern Zone (including the Willow Valley Trophy Club and Hillcrest Fish & Game Protective Association) ("Fish & Game Association").

WCEC noted that the Applicant's EIA identifies the Town of Pincher Creek, the Village of Cowley, the Municipality of Pincher Creek, the Municipality of Crowsnest Pass and Improvement District #6 as the communities on which the social and economic effects of the project are expected to be most pronounced. Within this area there are 79 Castle Crown members, 7 CPAWS members, 180 Trout Unlimited members and 80 Fish & Game Association members who are area residents on a full or part time basis. WCEC also includes 5 CPAWS members living in the Waterton Park area. WCEC argued that its members who own property in the Town of Pincher Creek and Municipal District #9 are subject to direct economic effects as taxpayers. In addition, WCEC argued that the proposed development would adversely affect residents of the Hamlet of Beaver Mines by increasing property values and changing the aesthetic value of the area by increasing the volume of traffic through the community.

In addition to full or part time residents, the WCEC includes members throughout the Province who use the area for recreational purposes or who are concerned about the integrity of the "Crown of the Continent" ecosystem. The WCEC contends that living in a healthy ecosystem is fundamental to the economic, social and spiritual well being of its members and that the West Castle Valley forms a critical part of the Crown of the Continent ecosystem. It claimed that the proposed development will severely impact the quality of life currently enjoyed by WCEC members by changing wildlife populations and their distributions and affecting outdoor recreational opportunities. The WCEC identified potential impacts on threatened populations of bull, golden and cutthroat trout. Therefore, the WCEC believes it is directly affected by the proposed development and is eligible for intervenor funding.

WCEC has worked to avoid duplication of efforts with other intervenors by pooling with a variety of groups to form a coalition which will address a number of areas of concern.

Trappers & Outfitters Wilderness Coalition (TOWC)

The Trappers & Outfitters Wilderness Coalition consists of the following groups and individuals: the Alberta Trappers' Association, the Alberta Wilderness Association, Diamond Hitch Outfitters, Porcupine Creek Outfitters Ltd., the Speak Up for Wildlife Foundation, the Rocky Mountain Ecosystem Coalition and a group of five independent trappers.

The Alberta Trappers' Association (ATA) is a registered association with 1,237 members throughout the province and 47 members in the Coleman Local #1030 which includes the West Castle drainage. The ATA's organizational objectives deal primarily with the conservation of wildlife resources, liaison with other trappers and promotion of the trapping industry. The ATA argued that it is directly affected by the proposed project due to the potential loss of wildlife habitat which could result in a decline in furbearing mammals and economic hardship for trappers. In addition, the ATA does not support the proposed disposition of public lands for private development.

The Alberta Wilderness Association (AWA) is a registered society in Alberta with a membership of 1,600 of which 16 are members in the Pincher Creek area. Objectives of the society are to promote the protection of additional wilderness areas in Alberta, safeguard Alberta's wildlands and initiate and encourage wildland educational efforts. The AWA argued that it would be directly affected by the proposed development because of its goal of protecting the environment. The AWA also opposes the privatization of public lands. In addition, AWA members enjoy recreational activities in this area. The AWA has specific environmental concerns regarding cumulative impacts and the potential impact of the proposed development on rare and endangered plant and animal species in the area.

Diamond Hitch Outfitters is a sole proprietorship owned and operated by Mr. Mike Judd which has operated on land adjacent to the proposed development since 1980. Porcupine Creek Outfitters Ltd is owned by Mr. Brent Sinclair and operates 75% in the West Castle area and 50% in the West Castle Valley. Both outfitters believe they will be directly affected by the proposed development because of the potential for disturbance of existing wildlands which could result in a loss of the wilderness experience by Albertans and international tourists who use their services. This would have an a negative economic effect on their businesses and as a result jeopardize the quality of life of Messrs. Judd and Sinclair.

The Speak Up for Wildlife Foundation is a registered society in Alberta with members in the Pincher Creek area. The Foundation claimed it is directly affected by the proposed development through its mandate to "co-operate and conserve" as it believes the proposed project will directly affect the water, vegetation and wildlife in the West Castle River drainage. It also opposes the privatization of public lands. In addition, the Foundation claimed to be directly affected due to its members' ongoing recreational use and enjoyment of the area.

The Rocky Mountain Ecosystem Coalition is currently being formed and claims to be directly affected due to its unique interest in the local ecosystem and its organizational objective which is to maintain biological diversity and to promote sustainable development.

TOWC includes a group of five independent trappers who own active traplines in the vicinity of the proposed development. These trappers believe they will be directly affected by the project due to increased

human habitation and activity which will interfere with, displace and reduce wildlife populations. It was submitted that losses in wildlife abundance would have an adverse impact on their livelihoods. The independent trappers view trapping as a historically significant business, recreation and way of life, all of which are dependent on wilderness lands.

TOWC also requested the Board to review its interpretation of "directly affected". They believe that in this case "directly affected" should include those involved in wilderness activities and those whose personal value systems support the preservation of nature.

Ms. Judy Huntley

Ms. Huntley recognized that she may not fit within the strict definition of being "directly affected" in that neither her present place of residence nor her current source of income is explicitly threatened or enhanced by the proposed development. She stated that she should receive an award of costs to participate in the hearing process because she has demonstrated an established interest in this matter over a number of years by participating in all of the associated public meetings. Ms. Huntley also stated that for the past two decades she has been a user of the West Castle Valley as a hiker, camper, cross-country and downhill skier, berry picker, and an employee of both Diamond Hitch Outfitters and an independent supplier of baked goods to the Westcastle ski lodge. Ms. Huntley stated that through her participation in the hearing the Board would be provided with an additional sense of continuity linking the Applicant's public communication process with its Application.

Ms. Sybille Manneschmidt

Ms. Manneschmidt is a property owner near the Hamlet of Beaver Mines. She indicated ongoing concerns regarding socio-economic impacts on the residents of the area surrounding the proposed development and the methodology the Applicant employed in its socio-economic impact assessment.

Views of the Applicant (Vacation Alberta)

This section of the Board's Report is a summary of the Applicant's general position regarding its consideration of issues dealing with the interpretation and application of section 10 of the Act.

Directly Affected

Vacation Alberta did not specifically address the question of whether each or any of the individuals or groups were directly affected, however, it did make it clear that its choice not to address the matter in its remarks to the Board should not be interpreted as an admission that any of the individuals or groups are or could be directly affected and therefore eligible for intervener funding. Vacation Alberta did question most of the individuals who provided evidence to the Board as to how they may be directly affected. This questioning largely explored specific physical locations of activities as well as the nature of use those

individuals made of the area.

Legal Fees

It was the submission of Vacation Alberta that they should not have to pay legal fees incurred by any participants determined by the Board to be eligible interveners. In the alternative, Vacation Alberta referred to the Report on Final Cost Awards made by the Board in relating to the Application No. 9103 filed by Three Sisters Golf Resorts Inc. (Three Sisters), noting that the CPAWS Group represented by Mr. Locke during that review received an award of \$37,000 to assist them with their legal expenses. Vacation Alberta stated that the \$65,000 for legal fees requested by the WCEC is excessive when compared to the amount the Board directed to the CPAWS Group for their participation in the six-week hearing held in 1992 to consider the Three Sisters development. The Applicant also pointed out the apparent discrepancy between the amount of legal fees requested by the WCEC and the amount requested by the TOWC.

Costs of Experts

The Applicant asked that the Board have regard for the history of the development of the terms of reference established for the EIA. It was stated that the local advisory committee established by the Applicant participated in the finalization of the terms of reference, which guided the direction and magnitude of the studies undertaken. The Applicant submitted that its project was extensively redesigned using the conclusions that arose from those studies.

The Applicant argued that the Application filed with the Board provides the Board with enough information to reach a determination as to whether the project is in the public interest. Vacation Alberta is of the opinion that the none of the participants identified any gaps in the Application and that some of the individuals seeking funding had not read the Application. Vacation Alberta stated that anyone with an "in principle" objection should not be a candidate for intervener funding as it is duplicative and creates unnecessary cost. Rather, the purpose of intervener funding should be to address a "technical" objection which would provide additional relevant information to the Board. The question as to whether the Board should be funding "technical" objections should be determined having regard for whether the Board feels it has sufficient information within the Application to reach a decision. Vacation Alberta submitted that the Board has access to this information within the Application submitted and that further studies and expertise are not necessary.

Vacation Alberta also suggested that in considering whether it would benefit from the input of additional experts the Board have regard for the access it might have to the experts within Alberta Environmental Protection.

In response to the need for further cumulative impact assessment identified by some of the interveners, Vacation Alberta stated that it had addressed this issue in a manner which it believed responded to the items as contained in both the EIA terms of reference and the regulations of the NRCB. It pointed out that cumulative impact assessment "is one of the most difficult scientific issues" and that if further assessment of cumulative impacts is necessary it should be done by others and at the expense of parties other than the Applicant.

3.2 Decisions Regarding Eligibility

Four interveners requested determination of their eligibility for funding under section 10(1) of the Act which provides:

" Individuals or groups of individuals who, in the opinion of the Board, are or may be directly affected by a reviewable project are eligible for funding under this section."

In its Three Sisters Report of Pre-Hearing Meeting, the Board concluded that two questions must be addressed in assessing eligibility. The first is whether those requesting funds are "individuals, or groups of individuals." The second is whether those individuals or groups of individuals "are or may be directly affected" by the proposed project.

In the Board's opinion, the four interveners are individuals or groups of individuals as intended under section 10(1) of the Act.

In the case of the two coalitions requesting funds, the Board accepts that individual people who believe that they may be affected by the proposed tourism development have chosen to be represented by the organizations making requests on their behalf. The Board therefore will assess whether or not those individuals are or may be directly affected by the proposed project.

In its decision respecting those seeking funds to intervene in the review of the Three Sisters Application, the Board held that:

"... in order to directly affect an individual or group of individuals a project would have to cause a detectable effect on it or them. Such an effect could be beneficial or injurious. ... Because the Board will normally be reviewing applications for projects that have been proposed but not constructed, it will not be considering effects that have occurred but effects that might occur. The Board has considered this, and concluded that there must be evidence acceptable to a reasonable person that: 1) a chain of causality exists, 2) an effect would probably occur and 3) the effect would not be trivial, before a potential effect can be considered to have been established."

The Board went on to define a "closeness test" which depends on the demonstration of an uninterrupted chain of cause and effect between the proposed project and the individuals requesting costs. The Board concluded that: "... in the case of individuals living within the vicinity of a proposed project, the demonstration of a chain of causality that could lead to direct effects on them would normally be easy to accomplish."

Several representatives of the Pincher Creek business community said at the meeting that they regard the proposed project as vital to the solution of the Town's economic problems. They clearly believe that residents of the Town may be directly affected by the project. For the Board to conclude otherwise it would have to analyze the potential economic impact of the proposed project on the Town and find it trivial.

Having considered all of the evidence before it, the Board concludes that individual residents of the Town **may be** directly affected by the proposed project and would therefore be eligible interveners under section 10(1) of the Act.

One intervener drew the Board's attention to a statement in the Vacation Alberta Corporation Application that the communities on which the social and economic effects of the project are likely to be the most pronounced are the Town of Pincher Creek, the Municipality of Pincher Creek, the Municipality of Crowsnest Pass and Improvement District #6. The Board also heard evidence that the proposed development lies within I.D. #6, that the Town and M.D. of Pincher Creek have a financial interest in the existing development at the site, and that that financial interest may be substantially affected by the proposed development. Additionally, several of the individuals claiming eligibility are residents of Beaver Mines, a hamlet within I.D. #6, closer to the project than Pincher Creek and located on the only highway access to the area. The Board believes that these are sufficient reasons to conclude that direct effects on the residents of the Town of Pincher Creek, the Municipality of Pincher Creek and I.D. #6 may not be trivial. All four interveners either are residents or are representing residents of some of those municipalities. The Board therefore finds them to be directly affected under section 10(1) of the Act and eligible for intervener funding.

3.3 Requests For Advance Funding

In the preceding section, the Board concluded that four of the parties that participated in the Pre-Hearing Meeting and requested advances are eligible to apply for funding in accordance with section 10(1) of the Act. This section of the Report summarizes the requests by these four parties. The following section gives the Board's decisions respecting the requests and supporting reasons.

West Castle Ecosystem Coalition

WCEC submitted a budget of \$110,119¹ and requested an advance award of \$76,000. The Coalition plans to retain legal counsel and socio-economic, aquatic, wildlife, plant and cumulative effects consultants to address the potential negative socio-economic impacts of the proposed development, particularly on the residents of the Beaver Mines, Hillcrest and Pincher Creek areas; provide evidence on the direct connection between regional ecosystem health and regional economic health; assess impacts on water quality and aquatic ecosystems and particularly fish; show the interconnected nature of the West Castle Valley to the regional ecosystem including Waterton Lakes National Park and Glacier National Park in Montana and the potential impacts on wildlife, in particular predators and ungulates. In addition, WCEC sought funding for expert assistance to prepare a regional overview of the potential cumulative effects of this proposed development.

At the request of the Board, WCEC undertook discussions with TOWC to determine if additional pooling of resources could occur and advised that it appeared that the two groups could share the expertise

¹(This figure corrects a number of arithmetic errors in WCEC's written submission.)

of a fisheries and water expert. As a result, TOWC reduced its budget request by \$8,000.

Trappers & Outfitters Wilderness Coalition

A revised budget of \$72,500 was submitted with a requested advance award of the full amount to be paid out in four equal installments. This included \$10,000 each for a wildlife expert, a hydrology and fisheries expert and an economic expert; \$5,000 for a cumulative ecosystem effects study and \$7,500 for a social impact expert and historian. Additionally, \$22,500 was requested for legal fees and \$7,500 for miscellaneous disbursements. It was felt that funds were needed for independent review partially due to the nature of stakeholder interests. It was also stated that TOWC has a different perspective, which distinguishes it from the WCEC and precludes the two from forming one group. Expert witnesses would address cumulative effects and impacts of the Application on furbearing mammals and water, riparian habitat, fisheries and wildlife, a historical analysis of the trapping industry and its unique contribution in the area, as well as the economic impacts (sustainability and natural land versus development). As discussed, it was determined that the \$10,000 for the fisheries and water expert could be reduced to \$2,000 due to sharing with the other coalition.

Ms. Judy Huntley

Ms. Huntley requested a per diem allowance of \$125 for her participation in the hearing process including attending the hearing and for her review of material relevant to the Application. In addition, Ms. Huntley also requested the participation of various Alberta Government representatives during the hearing process if necessary.

Ms. Sybille Manneschmidt

Ms. Manneschmidt proposed a four month ethnographic, qualitative assessment of residents' perceptions of potential impacts associated with the proposed project. Such a study was recommended as a means of correcting what Ms. Manneschmidt perceived as deficiencies in the Applicant's approach to socio-economic issues. In her submission, Ms. Manneschmidt indicated that the proposed study would be conducted by Dr. Buchignani, Chair of Anthropology at the University of Lethbridge, at an estimated cost of \$18,000 and would require four months to complete.

3.4 Decisions on Advance Funding

3.4.1 General Considerations Regarding Advance Funding

The Board has decided to deal with general issues concerning the amount of funds to be awarded in advance before proceeding to outline the detailed cost awards.

The Board believes that funding advances are not intended to cover the entire amount the Board might ultimately recognized as costs. In its Three Sisters Report on Pre-Hearing Meeting and Report on Final Cost Awards the Board indicated that the purpose of advances is to ensure that eligible interveners have sufficient funds to retain experts and for other expenditures necessary to prepare for a hearing. The Board also concurs with TOWC that advance awards may include funds necessary to enable an eligible intervener to participate in a hearing. The Board would still not expect advances to include all of an intervener's expenses. Advances would cover only amounts that would have to be disbursed by an intervener before a final cost award was issued.

In its Three Sisters Report of Pre-Hearing Meeting, the Board made the following distinction between costs awarded in advance, "recognized costs" and final cost awards:

"The requests for advances that the Board is dealing with are based on proposed budgets that were submitted, in varying degrees of detail, by participants in the pre-hearing meeting. The Board is providing its views on those budgets, along with its decisions regarding advance funding, in order to give participants direction as to those costs that are likely to be recognized in the final cost awards. It is emphasized however, that the final cost awards will be made, on application, following the hearing. At that time, on the basis of what actually transpires at the hearing, the Board may make cost awards against the proponent for an amount greater or less than provided for in this report. In the event that an ultimate award does not equal or exceed the amount of an advance, the intervener would be required to return the portion of the advance not awarded."

In determining if a final award of costs for a particular item is appropriate the Board will normally take into account the extent to which that item assisted it in reaching a decision. An objective of the Board is that intervener funding, when awarded, should result in a positive contribution to a review that assists the Board in reaching a decision. Applicants and interveners should be aware that such determination cannot be completed until after the public hearing when final cost awards are adjudicated. In the present decision

uncertainties about the amount and nature of disbursements expressed by TOWC would also be disposed of in the final cost award.

The Board is of the opinion that intervener funds are intended to assist with expert and legal assistance to individuals to enable them to understand an application and test its conclusions with respect to potential effects on them. The Board does not believe that the legislators intended funds to be provided to advocacy organizations with broad geographic scope to assist them in advancing their ideas or achieving their goals. Where an eligible individual has chosen to be represented by such an organization, the Board believes that costs awarded should be to deal with matters related to potential effects of a proposed project on that individual and not potential effects as they relate to the broader political or social goals of the organization.

The Board believes that it is an applicant's responsibility to conduct the studies and research necessary to assemble and present the information needed to determine whether or not a project is in the public interest. Funds provided to eligible interveners are to enable them to engage experts to assist them in understanding the information, the potential effects of the proposed project on them, and to test the applicant's reasoning in this regard. The Board does not believe that interveners should receive costs to conduct parallel studies to that of the applicant or to embark on original data gathering exercises. This is not to say that there may not be circumstances in which the Board determines that certain information not provided by the applicant is necessary to enable the Board to make a decision. In such a case the Board would take steps to ensure that such information is brought before it. Indeed the Board has taken such steps in past proceedings. In the case before us, Ms. Mannes Schmidt and TOWC have proposed studies intended to remedy perceived gaps in information. The Board finds neither to be appropriate items for which the Applicant should be required to pay. Because the Board would normally make conservative assumptions in the face of either a lack of information or a significant degree of uncertainty about a matter, the risk in failing to provide adequate information is to the Applicant. Experts' work for which costs may be recognized would normally include reviewing an application and supporting documents and, to the extent necessary, the related published literature, and preparing and asking questions. Legal work for which costs may be recognized would normally include of preparing lay and expert witnesses to give evidence, reviewing or assisting in the preparation of any written submissions by the intervener, leading evidence, asking questions at the hearing and dealing with any specific legal issues. The extent to which legal and/or expert assistance is required will depend on circumstances. The Board does not believe that such assistance would be necessary in all interventions or for all parts of any given intervention.

In its Report on the Pre-Hearing Meeting on the Three Sisters Application the Board provided views on what legal costs it might consider appropriate in an intervener cost request. The Board would add that it believes that legal costs related to preparing and making a request for intervener funding should not normally be paid by applicants.

The Board notes that legal costs are a greater proportion of the costs it has recognized in the case of the Application before it than in some previous applications. In the present case each of the two counsel involved is representing a number of distinct interveners and the Board has allowed for the time required to receive instruction from and coordinate representation of many clients. The number of interveners in WCEC which do not appear on the evidence before the Board to have extensive common membership is

greater than that in TOWC. The Board also notes that the rate charged by WCEC counsel is higher; the Board believes that the higher rate charged by more experienced counsel should, at least partially, be offset as a result of their ability to be more efficient in the use of their time prior to and during the course of the hearing. The Board will be able to make observations in this regard during the course of the hearing, and be able to adjust the total award for legal costs at the time the final cost decision is made if it is evident that the anticipated benefit has not occurred.

In previous decisions, and in its intervener guidelines, the Board has strongly encouraged interveners to form groups or coalitions in order to pool resources and make for shorter, more efficient and more cost effective hearings. Attaining this objective can result in substantial cost savings for the Board as well as for applicants and interveners. The Board therefore in recognition of the savings to the Board considers that a contribution towards the legal costs of an intervener group by the Board is appropriate, where determined and successful efforts have been made to pool resources and reduce costs. Both WCEC and TOWC advanced evidence regarding the effort necessary to form their respective coalitions and to organize the presentations for the Pre-Hearing Meeting. The Board acknowledges that significant efforts would be necessary to maintain the integrity of these coalitions throughout the review process and that these efforts could potentially shorten a public hearing significantly. In giving strong support to the pooling of resources, the Board does not wish to imply that valuable contributions cannot be made by individual interveners on specific issues, but the Board wishes to stress the value of efficiency in hearings.

The Board is concerned in this instance that the combined effect of the WCEC and TOWC requests for expert funding would result in a proliferation of expert testimony out of proportion to a need for expert review and analysis. Indeed the number of experts requested and their segregation, particularly in the environmental area, into specific rather than general subject matters, suggests that these interveners may be considering placing a good deal of primary evidence before the Board, as opposed to expert analyses of the Applicant's material. For example the funding request of WCEC proposes separate experts for each of birds, grizzly bears, wolves and ungulates. The Board believes that one or two qualified wildlife experts could between them make valuable submissions to the Board covering all of the species of animals potentially affected by the project. Another example of a subject matter where consolidation might usefully occur is in the area of hydrology. Given the Applicant's filed material on the potential effect of the project on the aquifer in the area, the services of both a surface water expert and a groundwater expert might not be needed.

An obvious example of economy which could be achieved between WCEC and TOWC is in the area of cumulative effects assessment. As the Board noted in its Three Sisters Decision Report, the Board believes consideration of the cumulative effects of the "base case" plus reasonably foreseeable development in the area to be necessary in determining what is in the public interest for purposes of the NRCB Act. The Board has also stressed in its Guidelines Respecting Claims for Eligible Interveners Cost Awards and in its Report of Pre-Hearing Meeting and Report on Final Cost Awards in the Three Sisters matter, the importance of coordination of efforts amongst interveners and avoidance of overlap. The Board therefore remains concerned that WCEC and TOWC have been unable to date to coordinate their efforts regarding the provision of expert testimony on cumulative effects. The Board has taken this lack of coordination into account in making its cost determinations in this Decision Report.

The Board also emphasizes that in making advance funding awards it is dealing only with those portions of an intervener's preparation and hearing work for which it believes the Applicant should provide costs. Of course this does not preclude interveners from doing other more extensive work in connection with the hearing. The Board knows that interveners typically do provide considerable time and effort on a voluntary basis for which they do not receive funding. The Board believes it is reasonable to expect such an effort, as a component of self-funding by interveners. It also recognizes that some interveners may have other sources of funding that may be used to assist in the preparation and presentation of interventions.

3.4.2 Funding Advances

The following are the Board's conclusions with respect to the requests for advance funding. They reflect the issues dealt with and conclusions of section 3.4.1, and also have regard for the magnitude of the proposed project and its potential effects, and all other matters which the Board considers relevant.

West Castle Ecosystem Coalition

The West Castle Ecosystem Coalition submitted a budget totalling \$110,119 of which \$76,000 was requested as an advance. Of the total amount sought by WCEC, \$43,035 was requested to cover the costs of expert witnesses and \$63,071 was requested for legal assistance. The Board is prepared to recognize \$31,000 for environmental expert assistance, \$45,000 for legal assistance and \$3,000 for miscellaneous disbursements and other costs for a total of \$79,000. The Board will provide a contribution of \$12,500 to legal costs in recognition of the cost savings the Board expects to experience as a result of WCEC's pooling initiatives. The Board will direct Vacation Alberta Corporation to provide an advance of \$45,500 to Mr. Locke's firm, in trust, for disbursement and formal accounting on behalf of the WCEC. In addition the Board will advance \$12,500 to WCEC.

Trappers & Outfitters Wilderness Coalition

The Trappers & Outfitters Wilderness Coalition submitted a budget of \$72,500 of which \$42,500 was for expert assistance in a variety of disciplines, \$22,500 was for legal assistance and \$7,500 was for

disbursements. During the Pre-Hearing Meeting TOWC agreed to pool expert assistance on hydrology and fisheries issues with WCEC, which resulted in an \$8,000 reduction in the overall budget to \$64,500. TOWC requested the full amount as advance funds to be paid in four equal installments. The Board is prepared to recognize \$15,000 for expert assistance, \$15,000 for legal assistance and \$2,000 for miscellaneous disbursements and costs for a total of \$32,000. In recognition of anticipated savings to the Board due to TOWC's efforts to coordinate the interventions of its coalition members, the Board will provide \$2,500 toward legal costs. The Board will direct Vacation Alberta Corporation to forward an advance of \$21,500 to the office of Stuart G. King, Blairmore, in trust, for disbursement and formal accounting on behalf of the TOWC. The Board's \$2,500 will also be forwarded in advance.

Ms. Judy Huntley

Ms. Judy Huntley requested an amount of \$125 per day. Although the Board found that Ms. Huntley was directly affected by the project the Board was not convinced that an award of costs was needed to allow her participation at the hearing.

Ms. Sybille Manneschmidt

Ms. Sybille Manneschmidt requested \$18,000. For the reasons outlined in section 3.4.1 the Board is not prepared to provide an award of costs.

4. OTHER MATTERS

4.1 Availability of Provincial Government Representatives

During the hearing, WCEC asked Alberta Environmental Protection to clarify the role that they would play in the upcoming hearing, and in particular, whether staff from the Fish and Wildlife Division would comment on the proposed project. Alberta Environmental Protection indicated that they were not prepared to address the concern at the time, but would undertake to provide an answer to the question after the Pre-Hearing Meeting. The Board has received a letter dated April 1, 1993, from Alberta Environmental Protection stating their position: "The Crown will neither be submitting evidence nor adopting a position on this project and consequently will not be available for cross-examination by participants at the hearing." Alberta Environmental Protection will appear on behalf of the Crown to cross-examine Vacation Alberta Corporation. Their representative will be assisted by officials from Alberta Government departments.

4.2 Potential Conflict of Interest

Vacation Alberta raised a concern that one of the experts proposed by WCEC is with EMA Associates. The concern was that a conflict of interest may occur as one of the hydrological studies referred to in the Application was performed by Golder Associates which subsequently acquired EMA Associates. Vacation Alberta suggested that they would not want to be limited in their ability to call the hydrological

expert forward as a witness at the hearing. The EMA person that WCEC is proposing to engage is a fisheries expert who was not involved with the Golder firm at the time the hydrological study was performed. Further, Vacation Alberta did not establish that they had a contractual relationship with Golder Associates. Based on this information, the Board does not believe that the individual who prepared the hydrological study would be prohibited from appearing at the request of Vacation Alberta at any hearing scheduled by the Board.

5. SUMMARY OF CONCLUSIONS

The Board has scheduled a hearing for Pincher Creek to begin on June 7, 1993. The date for the filing of intervener submissions is May 27, 1993.

The Board is directing Vacation Alberta Corporation to make the advances set out in Appendix B.

DATED at Calgary, Alberta this 8th day of April 1993.

NATURAL RESOURCES CONSERVATION BOARD

THIS IS AN ELECTRONIC COPY OF THE ORIGINAL REPORT WHICH CONTAINED THE BOARD MEMBERS SIGNATURES.

G. A. Yarranton
Acting Chairman

C. H. Weir
Board Member

Carolyn Dahl Rees
Acting Board Member

APPENDIX A
 PRE-HEARING MEETING PARTICIPANTS
APPLICATION NO. 9201 - MARCH 30, 1993

Participants (Abbreviations Used in Report)	Witnesses
Vacation Alberta Corporation (Vacation Alberta) Doug Mulholland Dr. Ron Wallace	Doug Mulholland Dr. Ron Wallace
Shauna Bedingfield	
Alberta Environmental Protection Bonnie Magill	
Town of Pincher Creek and Municipal District of Pincher Creek Bill Stitt	
Canada Parks Service (CPS), Waterton National Park Bill Dolan	
Westcastle Development Authority (WDA) Don Haavardsrud	
Pincher Creek & Area Economic Development Board Art Bonertz	
Pincher Creek & District Chamber of Commerce Jim Short	
Alberta Association for Disabled Skiers, Westcastle Darryl Medoruma	
Westcastle Ski Club Ben Kawaguchi	

APPENDIX A

Participants

(Abbreviations Used in Report)

Witnesses

Alberta Off Highway Vehicle Association,
Southern Area
Darryl Lewko

Federation of Alberta Naturalists (FAN)
Mary Helen Posey

West Castle Ecosystem Coalition (WCEC)
Canadian Parks & Wilderness Society
Castle-Crown Wilderness Coalition
Trout Unlimited (Canada) and Crowsnest River
Chapter
Alberta Fish & Game Association, Southern Zone

Harvey Locke
Allan Harvie

Earl Scott
Peter Letkeman
Art DeForge
David McNeill
Michael Gerrard
Nancy Tripp
Charlie Russell
Ernie Whelan
Jack Reedman
Ross MacDonald
Denis Gourdeau
Ardell Harris
Dave Sheppard
Jim Rennie

Trappers & Outfitters Wilderness Coalition (TOWC)
Alberta Trappers' Association
Alberta Wilderness Association
Speak Up for Wildlife Foundation
Diamond Hitch Outfitters
Group of Independent Trappers
Rocky Mountain Ecosystem Coalition
Porcupine Creek Outfitters Ltd.

Val Danielson

Ken Hildebrand
Mike Judd
Art DeForge
Gordon Hoffman
Brent Sinclair

APPENDIX A

 Participants

(Abbreviations Used in Report)

Witnesses

 Oldman River Regional Planning Commission
 Mike Burla

 Alpenland Ski and Sport, Westcastle
 Jim Lawson

 Canadian Ski Patrol System, Southern Alberta Zone
 Murray Pritchard

 Westcastle Community Association
 Derrill Murphy

 Lethbridge Fish & Game Association
 (Southern Alberta Environmental Group)
 Frank Johnston
 G. R. Stewart
Individuals
 Judy Huntley
 Sybille Manneschmidt
 Leo Puerzer
 Norris Graham
 Dr. David Balfour
 Rod Lanier
 Warren Vaile
 Paul Kenwood
 John Rottger
 Charlie Russell
 Rodney Cyr
 David McNeill
 Berthe Perry

 Judy Huntley
 Sybille Manneschmidt
Submitted Written Submission - Did Not Appear

Dennis Miller

Natural Resources Conservation Board Staff
 W. Kennedy
 J. Ingram
 R. Powell
 P. Cleary
 A. van Roodselaar

APPENDIX B

LISTING OF FUNDING REQUESTS
APPLICATION NO. 9201 - MARCH 30, 1993

Intervener	Requested		Recognized Costs		Advance	
	Total	Advance	Total	Applicant's Portion	Applicant's Portion	Board's Portion
West Castle Ecosystem Coalition	\$110,119	\$76,000	\$79,000	\$66,500	\$45,500	\$12,500
Trappers & Outfitters Wilderness Coalition	72,500	#2 72,500	32,000	29,500	21,500	2,500
Ms. Judy Huntley	1,750	#1	-	-	-	-
Ms. Sybille Manneschmidt	18,000	#1	-	-	-	-
total	\$202,369	\$148,500	\$111,000	\$96,000	\$67,000	\$15,000

Note #1 - Although a request for funding was received, no amount of advance funding was specified.

Note #2 - The Trappers & Outfitters Wilderness Coalition reduced its claim by \$8,000 through pooling with the West Castle Ecosystem Coalition. In addition, this group has suggested that its advance funding request be paid in four installments.