

# PROCESS GUIDE



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## INTERVENER FUNDING

### Process Guide

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## Section 1: Introduction

This guide provides both applicants and potential interveners with a summary of the process and procedures used in awarding intervener funding (paid by the applicant)—the purpose of funding, who qualifies, how to submit a request for funding, how that request will be handled and the costs that are likely to be judged acceptable for reimbursement.

This guide relates only to intervener funding applications for reviews conducted under the *Natural Resources Conservation Board (NRCBA)*. Reviews conducted under the NRCBA differ from reviews conducted under the *Agricultural Operation Practices Act (AOPA)*. Intervener funding provisions are not available for Board reviews conducted under AOPA.

Further details regarding the Board's review process are also available in a separate guide (The Board Review Process under the NRCBA). For a more detailed, legal description of the NRCB's mandate and processes, please refer to the NRCBA and the Rules of Practice of the Natural Resources Conservation Board Regulation (Rules of Practice). Part 2 of the Rules of Practice deals specifically with costs and funding. Acts and regulations are available through the Queen's Printer, and NRCB guide documents are available by contacting one of our offices or visiting our website.

Under the NRCBA, the NRCB's responsibility is to conduct a fair and open process for reviewing applications for proposed projects that will or may affect natural resources in Alberta. When reviewing a project application, the Board must decide whether or not the project is in the best interest of Albertans. The Board does this by weighing the potential environmental, economic and social impacts associated with each proposal.

Individual members of the public, coalitions of people sharing a common position on a project, organized public interest groups and federal, provincial and municipal representatives all have important roles to play in this process. Public participation helps ensure that the NRCB has access to relevant and reliable information from different perspectives when determining if a project is in the public interest.

Participation of both interveners and applicants in the Board's review process assists the Board in making its decision. In carrying out its mandate, the NRCB strives to conduct an effective and efficient project review process. The NRCB is accountable to the Alberta Legislature and, ultimately, to the taxpayers of the province for the careful use of public funds. Therefore, all participants in the NRCB process, including the Board itself, are responsible for using limited resources most effectively.

## Section 2: The Purpose of Intervener Funding

The NRCBA provides the legislative framework for a fair and impartial process for the review of projects that may affect the natural resources of Alberta. The Board operates in a quasi-judicial manner as required by the NRCBA and the *Administrative Procedures and Jurisdiction Act*. The Board is required to ensure that individuals or groups of individuals who are or may be "directly affected" by a reviewable project have:

- reasonable opportunity to review information submitted by the applicant and other parties;
- reasonable opportunity to provide evidence relevant to the application;
- when appropriate, an opportunity to cross-examine persons submitting information relevant to the application; and,
- an opportunity to make arguments before the Board regarding the project.

The NRCB's review process, including notice provisions, public access to information and the procedures for a public hearing, ensures these requirements are met.

Section 11 of the NRCBA makes provision for individuals or groups of individuals who, in the opinion of the Board, are or may be "directly affected" by a reviewable project to apply for intervener funding to assist their participation in the review process.

The Board has interpreted the provisions of section 11 as intending to ensure that individuals or groups of individuals, who are or may be "directly affected" by a reviewable project are in a position to participate effectively in the review process. The concept of directly affected is discussed in detail later in this document.

The Board has recognized that most of the projects that are subject to the NRCBA are relatively complex resource development projects. It has also recognized that the economic, social and environmental effects of the proposed projects are not necessarily easily understood. A party whose rights may be adversely affected may find it difficult, without legal or technical assistance, to furnish relevant evidence, to contradict or explain the facts or allegations, or to make representations by way of argument.

The Board believes the primary purpose of the intervener funding provisions of the act is to ensure that "directly affected" parties are able to effectively and efficiently participate in the review. In meeting its statutory duty to conduct its review in a fair and impartial manner, the Board believes that it may be necessary, in established cases, that certain resources are available to those who are or may be "directly affected" by a proposed reviewable project, to assist in the preparation and presentation of an intervention.

The Board has not directed intervener funding for the more general purpose of allowing other interested parties to express their views on whether the project is in the public interest.

### **Section 3: The Purpose of an Intervention**

The mandate of the Board is to determine the "public interest" having regard for the social, economic and environmental effects of a reviewable project. Your intervention should be relevant to the reviewable project and should provide information that will assist the Board in reaching its decision. An intervention can either oppose or support a reviewable project.

Not everyone is eligible for intervener funding; however, participation is encouraged from any party who has an established interest in a review and can provide relevant information.

Intervener funding may be granted to assist "directly affected" individuals to provide the Board with information regarding those issues which have a direct effect on them and the nature of those direct effects. The Board has not granted intervener funding for the more general purpose of allowing other interested parties to express their views on whether the project is in the public interest.

### **Section 4: Are You Eligible to Apply for Intervener Funding?**

Are you eligible to apply for an award of costs as an intervener? Intervener funding is dependent on a number of circumstances specific to the application being reviewed by the NRCB in which you want to intervene. In terms of its legislation, section 11 of the NRCBA is the defining section which the Board will use to guide its determination as to who may be eligible for funding. It states:

*"11(1) Individuals, or groups of individuals who, in the opinion of the Board, are or may be directly affected by a reviewable project are eligible to apply for funding under this section."*

Because the Board interprets section 11 on a project-by-project basis, the NRCB cannot offer potential interveners a clear and precise set of rules as to who is an eligible intervener and who is not. The Board, however, has devised a set of criteria from projects it has reviewed to date. It offers guidance to assist you in understanding how the Board makes its decisions and whether you may qualify for funding as a directly affected intervener.

**Section 5: Criteria for Intervener Funding Eligibility**

There are two broad criteria set out in section 11 of the act which the Board addresses in order to determine eligibility. You must establish that you:

- are "individuals or groups of individuals"; and
- "are or may be directly affected" by the proposed project.

**5.1: The Intent of Individuals or Groups of Individuals**

Based on its reviews of applications to date, the NRCB has interpreted the intent and meaning of the phrase "individuals or groups of individuals" in section 11(1) of the act, in the following way:

- a) Use of the phrase "individuals or groups of individuals" rather than the word "person" by legislators was intentional.
  - (i) In legislation the word "person" is commonly used to denote human beings and human organizations, including corporations, associations and other entities in which people formally band together.
- b) The Board's interpretation of the legislation has been that the legislator's intention was to make it possible to consider financial assistance for an individual or a group of individual people (coalition) to assist in preparing an intervention in an effective manner. Therefore, the initiative for an intervention should come from the individuals whose interests and activities may be directly affected and not from groups in general.

You may qualify as "individuals or groups of individuals" if you are:

- an individual or a group of individuals sharing a potential for being directly affected by a proposed project.

You may not qualify as "individuals or groups of individuals" if you are:

- an entity, such as a for-profit corporation, that has its own financial resources;
- a government, government organization or other publicly funded body that has access to financial resources through mechanisms other than intervener funding;
- an on-going, not-for-profit entity which has goals and objectives not specifically related to an application.

**5.2: Directly Affected**

The next step in determining eligibility is to consider whether you "are or may be directly affected" by the proposed project. To do so, the following points should be considered:

- a) In order for you to establish a direct effect, a project would have to cause a detectable effect on you—in either a positive or negative manner. Potential direct effects might include those on health or bodies, sustenance, livelihood, property or statutory rights.
- b) The Board has interpreted the term "directly" to exclude the broad public who may be indirectly affected by a project. The effects must be of a personal and individual nature and therefore are different, special or unique from effects that would apply to any other citizens living in Alberta.

For example, a potential argument could be used that all of the tax-paying citizens of Alberta, or perhaps even Canada, are affected by a project constructed in Alberta which pays taxes, employs workers, utilizes public infrastructure or affects the public purse in any manner. While such effects exist, they would not be "direct" effects as envisioned by section 11 of the NRCBA.

- c) The words "directly" and "affect" are commonly used words and may be

considered to retain their generally understood meanings when used in legislation. The meanings of these words within the context of past NRCB review processes have been interpreted to be:

- (i) "directly"; "...following an uninterrupted chain of cause and effect."
- (ii) "affect"; "...produce a (material) effect on..."

You may be judged as directly affected if you:

- are an adjacent property owner;
- live or work in the vicinity of a proposed project or are able to see or hear the proposed facility or the traffic which may pass into or out of it;
- would experience direct financial effects (i.e., loss of land or the use of land to which you are legally entitled, or a loss of employment or business); or,
- regularly use air, water, land or living organisms which would be affected by the proposed project exposing your body or health to an elevated risk of adverse effects.

"Closeness Test"

As a criterion to be used in determining if an intervener is directly affected by a project, the Board has adopted a "closeness test." To qualify under this test, an uninterrupted chain of cause and effect must exist between a potential intervener and a project. The intervener must satisfy the Board that:

- a chain of causality exists;
- an effect would probably occur; and,
- the effect would not be trivial.

In applying these criteria, the Board has placed the burden of proof on the intervener to demonstrate direct effects exist in the intervener's particular circumstances. It is not sufficient for an intervener to simply

express concern that in the event of a series of highly unlikely occurrences, there is a slight chance the intervener could be directly affected.

Other Considerations - "Are or May Be"

In the interpretation of the words "are or may be", the Board believes that it will normally be reviewing applications for projects that have been proposed but not constructed. Consequently, most of its attention will be directed to the words "may be." As such, the Board likely will not be considering effects that have occurred but effects that will or might occur. There must be a reasonable and foreseeable chance that the individual or group will be directly affected.

**5.3: What About Public Interest Groups?**

The Board has not directed intervener funding to public interest groups unless the criteria of "directly affected individuals or groups of individuals" has been met.

The Board recognizes that some individuals or groups of individuals may have a special interest in a reviewable project which can be somewhat more focused and specific than the general public, and this interest may be personal or individual in nature and therefore different, special or unique from that of other citizens. The Board believes that this type of interest is relevant to the determination of whether standing should be given to participate fully as an intervener in a proceeding. Having a special interest in a reviewable project does not necessarily mean the reviewable project will have direct effects on an intervener or that the intervener would be eligible for an award of costs.

An existing "association" that is corporate-like in structure, which was established before a particular project was proposed, and which has goals and objectives that are not specifically and exclusively related to an application under consideration by the Board would not normally qualify as an eligible intervener.

Eligible interveners who are or may be directly affected may choose to be represented by an association in which they are members. In this case, the Board could recognize as eligible costs those costs required to represent only the eligible interveners and the aspects of the project that would affect these members. If the individual chooses to be represented by a formal association, the submission should include written authorization from the "directly affected" individual or group of individuals requesting the association to represent his or her concerns and outline the specific impacts on those individuals believed to be at issue. The submissions should substantiate a conclusion by the Board that direct effects are likely to occur if the project were to proceed.

#### 5.4: Reasonableness

Cost applications must be reasonable and have regard for the following circumstances:

- a) the nature, complexity and size of the project being considered and the degree of direct effect or risk to which a cost claimant would be subjected;
- b) the level of detail contained in a submission. The emphasis should be on information not brought forward by other interveners that will assist the Board in making its decision, as opposed to information which is of specific interest to the intervener but not necessarily relevant to the Board's consideration of the project under review; and,
- c) the Board will normally require all interveners to pay a significant portion of the cost of their intervention.

An intervener who is eligible to apply for intervener funding and who is, in the opinion of the Board, an individual or group of individuals who are or may be directly affected by a reviewable project, is not necessarily or automatically entitled to an award of intervener costs. If the Board makes a determination that the intervener is eligible, the Board may make an award of costs that is reasonable and is directly and necessarily related to the

preparation and presentation of the submission with respect to the direct effects of the reviewable project on the eligible intervener.

The Board may deny a claim, in whole or in part:

- if the Board determines that the intervener is not an eligible intervener;
- if the claim is incomplete;
- if the Board is not satisfied that the costs are reasonable and directly and necessarily related to the preparation and presentation of the submission;
- if the Board is not satisfied that the eligible intervener is in need of legal or technical assistance in the preparation and presentation of the submission;
- if the Board is not satisfied that the intervention was conducted economically;
- if, in the opinion of the Board, the intervention and its presentation is unnecessary, irrelevant, improper, or intended to delay the proceeding or the claim is excessive, having regard to the nature of the proceeding and the intervention; or,
- for any other reason the Board considers appropriate.

The Board may, in determining if it will award costs or deny the claim or in determining the amount of costs that should be awarded, have regard for the following:

- whether the intervention is presented by, or on behalf of, an eligible intervener;
- whether the eligible intervener represents an interest that should be represented before the Board;
- whether the representation of such an interest contributed to the proceeding; and,
- whether the eligible intervener attempted to bring related interests together and pool resources.

**5.5: Preliminary Determination of Eligibility and Cost Advances**

At the pre-hearing conference the Board can make a preliminary determination on the eligibility of a party to receive intervener funding and provide some guidance about the type of expenses which might be considered in a final cost claim. Obtaining direction from the Board at the time of the pre-hearing conference will facilitate the review of final cost claims. Parties are encouraged to come forward at this stage in the review process.

The Board may award an advance of costs to eligible interveners and the following points should be considered before making a request:

- a) Cost advances are intended to allow eligible interveners who require financial assistance to retain necessary experts and legal assistance (if required) to prepare a submission.
  - i) Advance cost requests should not include costs to cover attendance at hearings, witness fees, and other similar items. These would be included in the final cost awards. However, the Board does expect advance cost requests to identify the amount the intervener expects to be included in a final cost claim.
  - ii) Advances are considered by the Board on the basis of a request for an advance made in accordance with the regulations.
  - iii) Any advance is subject to the intervener satisfying the Board that it has adequate expenditure controls in place.
- b) The Board will provide costs only for those portions of an eligible intervener's preparation and hearing work which it believes that the project proponents should provide.

In general, this would be confined to:

- i) work necessary to assess potential direct effects;

- ii) work which would not needlessly duplicate efforts by the applicant or other interveners; and,
  - iii) which will assist the Board in determining the public interest.
- c) An advance does not preclude you from doing other more extensive work in connection with the hearing at your own expense.

The Board believes it is reasonable to expect each intervention to include a self-funding component. It also recognizes that some interveners may have other sources of funding that may be appropriately used to assist in the preparation and presentation of interventions.

**Section 6: Procedure for Awarding an Advance of Costs**

1. As soon as you are aware that an application has been filed with the Board, and you have determined you may be an eligible intervener and will require financial assistance to prepare an intervention, you should notify the Board.
2. The Board will keep you advised of how it will be dealing with intervener funding on that application.
3. The Board will give you direction as to those costs that are likely to be recognized in the final cost awards.

**Section 7: Final Cost Awards**

Final cost awards will be made upon submission of a final cost claim following the hearing and will be based on receipts for expenses incurred and the merits of how effectively and efficiently you have presented your case:

- On the basis of what actually transpires at the hearing, the Board may make a cost award against the proponent for an amount greater or less than provided for in its pre-hearing assessment.



- If the final cost claim does not equal or exceed the amount of an advance, you would be required to return the difference.

An advance ruling by the Board regarding eligibility to receive intervenor funding at the pre-hearing conference stage will expedite review of final cost claims.

**Section 8: Issues Interveners Should Consider**

If you believe that you are or may be "directly affected" by a proposed project, you should consider the following when preparing your cost request:

- Should it be a single submission or a joint submission with other interested individuals sharing similar concerns?
- Do you require financial assistance to intervene?

**8.1: Preparation and Presentation of a Reasonable Intervention**

A written submission should include:

- a) issues specifically related to the direct effects of the proposed project on the intervenor;
- b) the cost-effective use of witnesses and experts;
- c) material that the intervenor or witness has prepared;
- d) a description of efforts made to resolve issues with the applicant and of points of agreement or disagreement with the applicant (for any unresolved issues, a description as to the reason the issues remain unresolved); and,
- e) a summary of the issues the Board is being requested to consider and the evidence supporting the intervenor's conclusions.

A submission should not include:

- a) arguments of a general nature, about issues not being considered, or not related or relevant to the application;

- b) arguments about matters already decided;
- c) arguments about government policy or legislative changes that should more properly be placed before the government; or,
- d) a duplication of material provided in the proponent's application.

Verbal submissions should highlight and address major issues in a cost-effective manner.

**8.2: Coordination of Effort Among Interveners**

As noted in Part 2 of the Rules of Practice, when making advance funding or cost awards, the Board will consider "whether the interest will be adequately represented by other intervenors" and "whether the eligible intervenor attempted to bring related interests together and pool resources." The Board believes these are important considerations and has, in general, encouraged intervenors who coordinated their efforts to reduce duplication of expert witnesses and increase efficiency in the review process.

**8.3: Pre-Hearing Conference**

Proceedings before the NRCB will often include a formal public hearing. To assist the public hearing process, the Board may convene a pre-hearing conference to deal with matters related to intervenor funding, the timing and location for the hearing, and to confirm the public interest issues to be examined during the hearing. However, the Board encourages all project proponents to consider consulting with interested and directly affected parties at an early stage in their planning process.

In doing so, the objective would be two-fold:

- a) to examine, address and solve the concerns of interested and directly affected parties during the planning stage when project changes can be better accommodated; and,
- b) to enable the proponent to present the NRCB with an application that

addresses the concerns of interested and directly affected parties, thereby adding efficiency to the review process and minimizing costs for all parties.

The Board considers pre-hearing consultations by the proponent to be an important part of the review process. Failure by the project proponent to do so may add time and delays to the approval process and may require the need for a public hearing that might otherwise be avoided.

The Board will require project proponents to provide a list of issues identified in the public consultation process and identify solutions which have been proposed to resolve the concerns. Those issues which remain unresolved should be identified with an explanation provided as to why they remain unresolved. The Board will make the applicant's description of issues available to all participants for discussion during the pre-hearing conference to confirm the nature and status of relevant issues before the public hearing.

#### **8.4: Voluntary Intervener Funding**

Where pre-hearing consultation yields a consensus among affected parties, a proponent might voluntarily agree to directly fund the costs of "intervention." Again, the Board is very supportive of such a practice.

It should be emphasized, however, that if this does not occur, directly affected individuals or groups of individuals may still be eligible for an award of reasonable costs through application to the Board.

#### **8.5: Joint Federal-Provincial Reviews**

Where a public review of an application is held jointly with the federal government, the Board will establish appropriate procedures with the Canadian Environmental Assessment Agency to ensure that duplication of funding to interveners does not occur.

## **Section 9: What Costs Can Be Recovered**

The costs awarded to an eligible intervener depend on the specific circumstances of each individual application. However, in general terms, costs must be:

- reasonable, directly and necessarily related to a Board proceeding;
  - an actual expenditure incurred and paid out-of-pocket by the intervener; and,
  - properly documented.
1. Cost awards are intended to cover those costs which are reasonable and which are directly and necessarily related to efficiently and economically preparing and presenting a submission regarding direct effects on the eligible intervener.
  2. Cost awards are normally paid by the proponent of the proposed project. With this in mind, the following should be considered:
    - a) a proponent expects to pay no more for the organization, preparation and presentation of an intervener's submission than what is warranted by the impact, size and complexity of the proposed development; and,
    - b) the intervener decides the scope of a submission, the complexity and associated specialized studies if any, and hence the total cost. But the cost award will reflect what is judged by the Board to be reasonable and necessary considering the particular circumstances associated with the review of each specific project. It is for this reason that the Board encourages interveners to seek its direction at the pre-hearing conference to determine eligibility for funding and the nature of costs which may be awarded.
  3. Normally, the Board will require funded interveners to pay a significant portion of their actual disbursed costs as their volunteer contribution, and will require the intervener to provide a full account of the total cost of the

intervention, with volunteer contributions separately identified.

### Section 10: How to Make a Claim for Intervener Funding

1. If you plan to claim costs you should document those costs from the moment of planning your intervention. Interveners are encouraged to contact Board staff as soon as possible regarding their intent to recover costs.
2. An application for costs must be filed within 30 days of the close of the hearing, or in the time set out in the notice of the Board's decision that the project may be reviewed without a hearing, and must include all relevant and supporting receipts, invoices, accounts and other documentation. Copies are to be submitted to both the Board and the project proponent.
3. The claim must be submitted in the form prescribed by the regulations (a copy of the form is provided).
4. Claims not received within 30 days of the close of the hearing will not be considered by the Board unless very special circumstances exist.
5. When your cost claim is submitted, ensure that adequate supporting information is attached.
6. The proponent, if it wishes to comment on your claim, must provide these comments to you and the Board within 14 days of the receipt of the claim.
7. If you wish to reply to those comments, your reply must be provided to the Board and the proponent within 14 days of the receipt of the proponent's comments.
8. When your cost claim is complete, including all supporting documentation, and the time for providing comments and replies has expired, the Board will consider your claim in light of the

particular application and render its decision as soon as possible. A final cost claim that is consistent with the advance cost decision may be considered in priority to claims that raise new funding matters.

9. If an award is made, the Board issues an order which sets out:
  - a) the amount of the award;
  - b) who shall pay it;
  - c) to whom the payment shall be made; and,
  - d) a letter summarizing the breakdown of the award and the reasons for it.

Please remember:

1. In planning to intervene and file a submission regarding an application before the Board, you should keep a record and details of all expenditures related to the preparation and presentation of the submission regardless of whether or not you are acting on your own behalf, in a group or with the assistance of experts.
2. You will be responsible for supporting your claim and establishing that the costs claimed are reasonable and directly and necessarily related to the direct effects of the project on you.

### Section 11: Questions Respecting Interveners' Costs

The Board recognizes that an intervener who has not previously been involved in the NRCB's review process may have further questions about the costs and funding provisions in the Rules of Practice and related procedures used by the Board. Assistance and information may be obtained by contacting the NRCB (see back cover for contact information). Please direct requests to the NRCB's General Counsel.

## Appendix 1 – Summary of Costs

### Types of Costs That May be Awarded

#### 1. Costs for an Individual Eligible Intervener

a) Costs of Preparing a Submission on Direct Effects

Letters and simple submissions that take a few hours to prepare are often adequate and are not costly. The following criteria apply to more substantial submissions:

- i) a substantial submission prepared without expert help may receive an honorarium of \$100, \$300, or \$500 depending on its complexity.
- ii) where preparation time clearly exceeds 50 hours, an honorarium in excess of \$500 may be considered.
- iii) if an eligible intervener chooses to be assisted by a lawyer, or an expert consultant, part of these fees may qualify for a cost award.

b) Reasonable Expenses

- i) Reasonable expenses could include: stationery, postage, telephone calls, photocopying, purchase of necessary documents, and typing of submissions.

c) Costs of Appearing at a Public Hearing

If an eligible intervener attends and participates in a public hearing, he or she can normally recover some of these costs. These costs include:

- i) An honorarium of \$50 for each half day actually present at a hearing to listen to the evidence of others (as appropriate), question others, present an intervention or confer with a lawyer or expert.
- ii) In special circumstances where interveners experience an actual loss of wages and this is adequately documented, part or all of the wage loss may be allowed as a cost instead of the honorarium described above.
- iii) Other expenses may include:
  - necessary travel by an economical means of public transportation or at the current automobile rate for distances actually travelled;
  - food expenses for up to three normal meals per day; and,
  - lodging at normal hotel or motel rates when it is necessary to stay until the next day.

#### 2. Costs for a Group of Eligible Interveners (a coalition)

The Board encourages the formation of a group of eligible interveners (coalition) with a common purpose to pool resources and efforts. The guideline for expenses of an eligible individual intervener apply to such a group except as noted below.

a) Costs of Forming a Group

The Board may review applications for developments that cover a large land area and which may affect a large group of people. Logically, these people might decide to form a group or coalition with a common purpose.

In such instances, the organization of a group or coalition may require considerable time, effort and expense. The following costs could be claimed by the people who organize, coordinate and represent such groups:

- i) Whoever organizes the coalition (up to four individuals) may receive an honorarium of \$100, \$300, or \$500.
  - ii) Mileage, meals or rental of meeting rooms should be documented to indicate the amount of activity necessary to organize the group.
  - iii) In exceptional cases involving much time and a very large number of individuals, some expenses may be considered in addition to honoraria.
- b) **Costs of Preparing a Group Submission**  
When a substantial submission is prepared on behalf of a coalition, the following criteria apply:
- i) Up to four individuals who prepare the submission without expert help may qualify for honoraria of \$100, \$300 or \$500 for personal time and expenses.
  - ii) Where the necessary preparation time clearly exceeds 50 hours each for any or all of the one to four individuals involved, honoraria in excess of \$500 may be considered.
  - ii) Where eligible interveners choose to be assisted by experts or a lawyer:
    - Depending on who does most of the work preparing the submission, part of the lawyer's or expert's fees may qualify for a cost award.
- c) **Reasonable Expenses**  
Reasonable expenses related to preparing a submission may be allowed and are the same as those noted previously for individual submissions.
- d) **Costs of Appearing at a Public Hearing**  
If a number of individuals from an eligible coalition present a submission, attend and participate in a public hearing, they can normally recover some of their costs. These costs include:
- i) If a submission is presented without the assistance of a lawyer, one to four representatives may each receive honoraria of \$50 for each half day they are actually present at the hearing.
  - ii) If a submission is presented with the assistance of a lawyer, one or two representatives of the group may each receive honoraria of \$50 for each half day they are actually present at the hearing.
  - iii) Up to six individuals may each receive \$50 for each half day during which it is necessary for them to appear in support of their submission.

### 3. Legal Costs

To maximize the effectiveness and efficiency of a submission, an eligible intervener may choose to be assisted by a lawyer. Part of the lawyer's fees may qualify for a cost award:

- If the lawyer does most of the work in preparing the submission, the following costs may qualify: his or her personal services in whole or in part at the hourly rate currently in effect and being used to bill clients;
- "disbursements" in the lawyer-client account; and,
- hearing expenses including: three normal meals per day, reasonable lodging and economical public transportation or automobile travel at the current rate.

If submitting legal costs for consideration of an award, the Board normally requires that they be supported by a copy of the client account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding.

Legal fees normally do not constitute a significant portion of the intervener's final cost submission and the Board expects interveners to limit legal fees to ensure sufficient attention is placed on the substantive aspect of the intervener's submission. Claimed legal costs should be for legal services only. The Board emphasizes that lawyers should not be retained to do work which could be undertaken by an intervener or others.

#### 4. Costs of an Expert

To maximize the effectiveness and efficiency of a submission, an intervener may also choose to be assisted by one or more experts. The Board emphasizes that experts should not be retained to do work which could be undertaken by an intervener or others.

- a) If an intervener engages the services of experts:
  - i) Experts may be registered professionals, may carry on a consulting business or may be expert in a certain field due to practical experience or specialized training.
  - ii) One expert should not duplicate the specialty and services of another for the same intervener. As suggested above, an expert's assistance must be related to that expert's area of special knowledge.
  - iii) An expert may appear as an expert witness to support part of a submission that was prepared by that expert. Normally, an expert need not attend the whole hearing.
- b) The following costs of an expert may qualify:
  - i) Personal service in preparing a submission, or appearing as a witness at a reasonable hourly rate currently in effect and being used to bill clients.

Personal service by an expert who does not normally engage in services for a fee will be compensated at the current hourly rate or wage concurrent with someone who is trained and employed in the area of their expertise. For example, an irrigation technology expert will be paid commensurate with the wage of an irrigation technologist, and so forth.
  - ii) Associated services such as typing or drafting should be properly documented with a copy of the account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding.
  - iii) Hearing expenses include: three reasonably priced meals per day, lodging at reasonable motel or hotel rates, and economical public transportation or automobile travel at the current rate.

Personal services already compensated for by others in the form of hourly employment or regular salary will not be compensated for in a cost award.

#### 5. Costs of Other Witnesses

An eligible intervener may find it necessary to support a submission with the testimony of a witness who has some special relevant knowledge but who is neither an intervener nor an expert.

In such cases, the following costs may apply:

- a) a fee of \$50 for each half day present at a hearing in order to appear as a witness on behalf of an intervener. Normally, such a witness would not attend the whole hearing.
- b) Hearing expenses, as previously described for both a lawyer and expert, may apply to a witness.

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# APPLICATION FORM

# Intervener Funding Advance Award of Costs

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## STEP 1 – GENERAL CONSIDERATIONS IN FILING YOUR APPLICATION

To help the NRCB process your application, please be as thorough as possible in providing the information requested in the attached format. A properly completed form will speed up the processing.

Your Request for an Advance Award of Costs must be submitted to the Board and to the project applicant by the date specified by the Board.

There is no guarantee that any or all of your costs will be awarded. You must first qualify for costs (see the Intervener Funding Process Guide) and then only reasonable costs will be awarded.

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## STEP 2 – YOUR MAILING INFORMATION

NRCB Application No: \_\_\_\_\_ Applicant: \_\_\_\_\_

Name(s) of Intervener(s) *(attach a list if necessary)*

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*Note: Attach written authorization by "directly affected" individuals or groups of individuals where a formal association has been requested to represent their concerns and outline specific impacts to be addressed.*

Was a group or coalition formed to intervene in this application? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, name of group: \_\_\_\_\_

Name of intervener or group representative: \_\_\_\_\_

Mailing and email address and local telephone number for intervener or group:

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Has a copy of this request (with supporting documentation) been sent to the proponent or its lawyer?

Yes \_\_\_\_\_ No \_\_\_\_\_

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### STEP 3 – JUSTIFICATION OF CLAIM

Attach the following information:

- describe the extent to which the intervener will be undertaking on the intervener's own behalf the preparation and presentation of the submission;
- the controls the intervener has in place for the expenditure of any advance funding received;
- the reasons why funds are required in advance;
- a detailed forecast of the total cost of the intervention, the amount that you expect to claim in any final claim for costs and the amount of advance funding sought; and,
- a detailed description of the information that you intend to include in your submission and how such information may assist the Board in assessing the social, economic or environmental effects from the reviewable project.

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### STEP 4 – ELIGIBILITY FOR FUNDING

Provide detailed evidence to support your claim as to why you are or may be "directly affected" by the proposed application. Attach this information to your claim.

It is recommended that interveners review the NRCB's Intervener Funding Process Guide. Submissions should identify detectable effect on the directly affected party and evidence of an uninterrupted chain of cause and effects between the proposed project and the individual or group of individuals. Effects noted should not be trivial in nature.



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## STEP 5 – THE DETAILS OF YOUR REQUEST FOR AN ADVANCE AWARD OF COSTS

### 1. INTERVENER

	Honoraria	Expenses
a) Forming a group *	\$ _____	\$ _____
a) Preparing a submission *	\$ _____	\$ _____
b) Attending a hearing (½ days x \$50)	\$ _____	\$ _____
Subtotals	\$ _____	\$ _____

<b>TOTAL PERSONAL CLAIM OF INTERVENER</b>	
Subtotals A + B =	\$ _____ (line 1)
Please transfer total to Section 6 – Line 1 (Page 21)	

*\* Normally the total of these two amounts will not exceed \$500*

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**2. LAWYER**

Name: \_\_\_\_\_

Mailing/Email Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**TOTAL FEES & DISBURSEMENTS FOR LAWYER'S SERVICES**  
Breakdown of Lawyer's Account

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a) Fees for preparation of submission	____ hrs x \$ _____ /hr	\$ _____
b) Fees for attendance at hearing	____ hrs x \$ _____ /hr	\$ _____
c) Disbursements		\$ _____

**TOTAL CLAIM RESPECTING LAWYER'S ACCOUNT**

\$ \_\_\_\_\_  
(line 2)

Please transfer total to Section 6 – Line 2 (Page 21)

*\* claimed legal costs should be for legal services only (See Intervener Funding Process Guide, Legal Costs, Page 14)*

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**3. EXPERT/CONSULTANT**

Name: \_\_\_\_\_

Mailing/Email Address: *(where there is more than one expert or consultant, please attach additional information)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Services to be Performed: *(attach work specifications for each consultant/expert)*

Total Fees and Disbursements: *(attach accounts)*

**Breakdown of Accounts**

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a) Preparation of submission	_____ hrs x \$ _____ /hr	\$ _____
b) Attendance at hearing	_____ hrs x \$ _____ /hr	\$ _____
c) Costs of drafting, administrative services, etc. (if applicable, attach a separate breakdown)	_____ hrs x \$ _____ /hr	\$ _____
d) Total disbursements		\$ _____

TOTAL CLAIM RESPECTING EXPERT/CONSULTANT ACCOUNT(S)

\$ \_\_\_\_\_  
(line 3)

Please transfer total to Section 6 – Line 3 (Page 21)

\* Note: *Personal services already compensated for by others in the form of hourly employment or regular salary will not be compensated for in a cost award (See Intervener Funding Process Guide, Costs of an Expert, Page 15)*

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**4. WITNESS FEES**

*(for persons who appear at a hearing to give evidence but who are not interveners making a claim under Step 5, Item 1c)*

a) Meeting with a lawyer \_\_\_\_\_ witnesses x \_\_\_\_\_ ½ days at \$50 \$ \_\_\_\_\_

b) Attendance at a hearing to give evidence \_\_\_\_\_ witnesses x \_\_\_\_\_ ½ days at \$50 \$ \_\_\_\_\_

<p>TOTAL CLAIM RESPECTING WITNESS(ES) FEES</p> <p>\$ _____</p> <p>(line 4)</p> <p>Please transfer total to Section 6 – Line 4 (Page 21)</p>
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**5. INTERVENER VOLUNTARY CONTRIBUTION**

Attach a summary of your voluntary contribution to this intervention. Provide as much detail as possible including anticipated hours to be contributed, tasks performed and types of expenses which may be incurred.

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**6. SUMMARY OF FUNDING REQUESTED**

*(please transfer totals from preceding sections to the appropriate lines below)*

Intervener(s)	(from line 1)	\$ _____
Lawyer	(from line 2)	\$ _____
Expert(s)/Consultant(s)	(from line 3)	\$ _____
Witness(es)	(from line 4)	\$ _____

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**7. TOTAL AMOUNT OF INTERVENER FUNDING REQUESTED**

Total Request (total of lines 1-4)	=	\$ _____
Total amount sought as an advance award	=	\$ _____

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**PLEASE SEND YOUR COMPLETED APPLICATION AND COPIES OF SUPPORTING DOCUMENTS DIRECTLY TO THE NRCB AND THE PROPONENT:**

- 1) **Natural Resources Conservation Board**  
19<sup>th</sup> floor, 250 – 5 Street SW  
Calgary, AB T2P 0R4

**Email:**            [laura.friend@nrcb.ca](mailto:laura.friend@nrcb.ca)  
**Phone:**            (403) 297-8269            **Toll-Free:**        310-0000

- 2) **The proponent's lawyer, if any, or to the proponent at its business address.**
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# APPLICATION FORM

# Intervener Funding Final Costs Claim

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## STEP 1 – GENERAL CONSIDERATIONS IN FILING YOUR APPLICATION

To help the NRCB process your application, please be as thorough as possible in providing the information requested in the attached format. A properly completed form will speed up the processing.

Attach all relevant and supporting receipts, invoices, accounts and other documentation.

Don't be late! Within 30 days of the close of the hearing, or the decision that the project can be reviewed without a hearing, your Final Costs Application Form must be submitted to the Board and to the project applicant.

There is no guarantee that any or all of your costs will be awarded. You must first qualify for costs (see the NRCB's Intervener Funding Process Guide) and then only reasonable costs will be awarded.

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## STEP 2 – YOUR MAILING INFORMATION

NRCB Application No: \_\_\_\_\_ Applicant: \_\_\_\_\_

Hearing held at: \_\_\_\_\_  
(location)

Name(s) of Intervener(s) *(attach a list if necessary)*

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**Note:** *Attach written authorization by "directly affected" individuals or groups of individuals where a formal association has been requested to represent their concerns and outline specific impacts to be addressed.*

Was a group or coalition formed to intervene in this application? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, name of group: \_\_\_\_\_

Name of intervener or group representative: \_\_\_\_\_

Mailing address, email address, and local telephone number for intervener or group:

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Has a copy of this claim (with supporting documentation) been sent to the proponent or its lawyer?

Yes \_\_\_\_\_ No \_\_\_\_\_

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### STEP 3 – THE DETAILS OF YOUR CLAIM

*Note: If the details of your eligibility for an award of costs has not been decided by the Board, please refer to Step 3 & 4 in the Advance Award of Costs application*

#### 1. INTERVENER

	Honoraria	Expenses
a) Forming a group *	\$ _____	\$ _____
b) Preparing a submission *	\$ _____	\$ _____
c) Attending a hearing (½ days x \$50)	\$ _____	\$ _____
Subtotals	A \$ _____	B \$ _____

<b>TOTAL PERSONAL CLAIM OF INTERVENER</b>	
Subtotals A + B =	\$ _____ (line 1)
Please transfer total to Section 6 – Line 1 (Page 27)	

*\* normally the total of these two amounts will not exceed \$500*

---

## 2. LAWYER

Name: \_\_\_\_\_

Mail/Email Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

**TOTAL FEES & DISBURSEMENTS FOR LAWYER'S SERVICES**  
Breakdown of Lawyer's Account

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a) Fees for preparation of submission	____ hrs x \$ ____ /hr	\$ _____
b) Fees for attendance at hearing	____ hrs x \$ ____ /hr	\$ _____
c) Disbursements		\$ _____

**TOTAL CLAIM RESPECTING LAWYER'S ACCOUNT**

\$ \_\_\_\_\_  
(line 2)

Please transfer total to Section 6 – Line 2 (Page 27)

*\* claimed legal costs should be for legal services only (See Intervener Funding Process Guide, Legal Costs, Page 14)*

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### 3. EXPERT/CONSULTANT

Name: \_\_\_\_\_

Mail/Email Address: *(where there is more than one expert or consultant, please attach additional information)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Services Performed: *(attach work specifications for each consultant/expert)*

Total Fees and Disbursements: *(attach accounts)*

#### Breakdown of Accounts

- |   |                          |          |
|---|--------------------------|----------|
| a) Preparation of submission  | _____ hrs x \$ _____ /hr | \$ _____ |
| b) Attendance at hearing  | _____ hrs x \$ _____ /hr | \$ _____ |
| c) Costs of drafting, administrative services, etc.<br>(if applicable, attach a separate breakdown) | _____ hrs x \$ _____ /hr | \$ _____ |
| d) Total disbursements  |                          | \$ _____ |

TOTAL CLAIM RESPECTING EXPERT/CONSULTANT ACCOUNT(S)

\$ \_\_\_\_\_  
(line 3)

Please transfer total to Section 6 – Line 3 (Page 27)

\* NOTE: *Personal services already compensated for by others in the form of hourly employment or regular salary will not be compensated for in a cost award (See Intervener Funding Process Guide, Costs of an Expert, Page 15)*

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#### 4. WITNESS FEES

*(for persons who appear at a hearing to give evidence but who are not interveners making a claim under Step 3, Item 1c)*

- a) Meeting with a lawyer                      \_\_\_\_ witnesses x \_\_\_\_ ½ days at \$50        \$ \_\_\_\_\_
- b) Attendance at a hearing to give evidence    \_\_\_\_ witnesses x \_\_\_\_ ½ days at \$50        \$ \_\_\_\_\_

<p>TOTAL CLAIM RESPECTING WITNESS(ES) FEES</p> <p style="margin-left: 100px;">\$ _____</p> <p style="margin-left: 100px;">(line 4)</p> <p>Please transfer total to Section 6 – Line 4 (Page 27)</p>
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#### 5. INTERVENER VOLUNTARY CONTRIBUTION

Attach a summary of your voluntary contribution to this intervention. Provide as much detail as possible including anticipated hours to be contributed, tasks performed and types of expenses which may be incurred. Actual expenditures must be supported by invoices. Mileage claims should include kilometres driven, rate per kilometre and purpose of trip.

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#### 6. SUMMARY OF AMOUNT CLAIMED

*Please transfer totals from preceding sections to the appropriate lines below*

Intervener(s)	(from line 1)	\$ _____
Lawyer	(from line 2)	\$ _____
Expert(s)/Consultant(s)	(from line 3)	\$ _____
Witness(es)	(from line 4)	\$ _____

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**7. TOTAL AMOUNT OF INTERVENER FUNDING REQUESTED**

Total amount of this claim (total of lines 1-4)	=	\$ _____
Less advance cost award (if any)	-	\$ _____
Total	=	\$ _____

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**PLEASE SEND YOUR COMPLETED APPLICATION AND COPIES OF SUPPORTING DOCUMENTS DIRECTLY TO THE NRCB AND THE PROPONENT AS FOLLOWS:**

- 1) Natural Resources Conservation Board  
19<sup>th</sup> floor, 250 – 5 Street SW  
Calgary, AB T2P 0R4**

**Email:           laura.friend@nrcb.ca**  
**Phone:           (403) 297-8269           Toll-Free:       310-0000**

- 2) The proponent's lawyer, if any, or to the proponent at its business address.**

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

**Calgary Office**

19th floor, 250 - 5 Street S.W.  
Calgary, AB T2P 0R4  
T (403) 297-8269

**Edmonton Office**

4th Floor, Sterling Place, 9940 - 106 Street  
Edmonton, AB T5K 2N2  
T (780) 422-1977

email: [info@nrcb.ca](mailto:info@nrcb.ca)

web address: [www.nrcb.ca](http://www.nrcb.ca)

*Copies of the NRCB Act, Rules of Practice of the Natural Resources Conservation Board Regulation and the Administrative Procedures Act are available through Queen's Printer. NRCB Guides are available by contacting the NRCB's Edmonton office.*

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