

JUNE 11, 1989

THIS OLD MAN

"A Celebration of Its Life, Its Land, and Its People"

Join us for this historic Wilderness Concert
as

IAN TYSON

presents

CHINOOK ARCH RIDERS & "FRIENDS"

GORDON LIGHTFOOT

MURRAY McLAUCHLAN

MARK KOENIG

With Special Guests

DAVID SUZUKI

ANDY RUSSELL

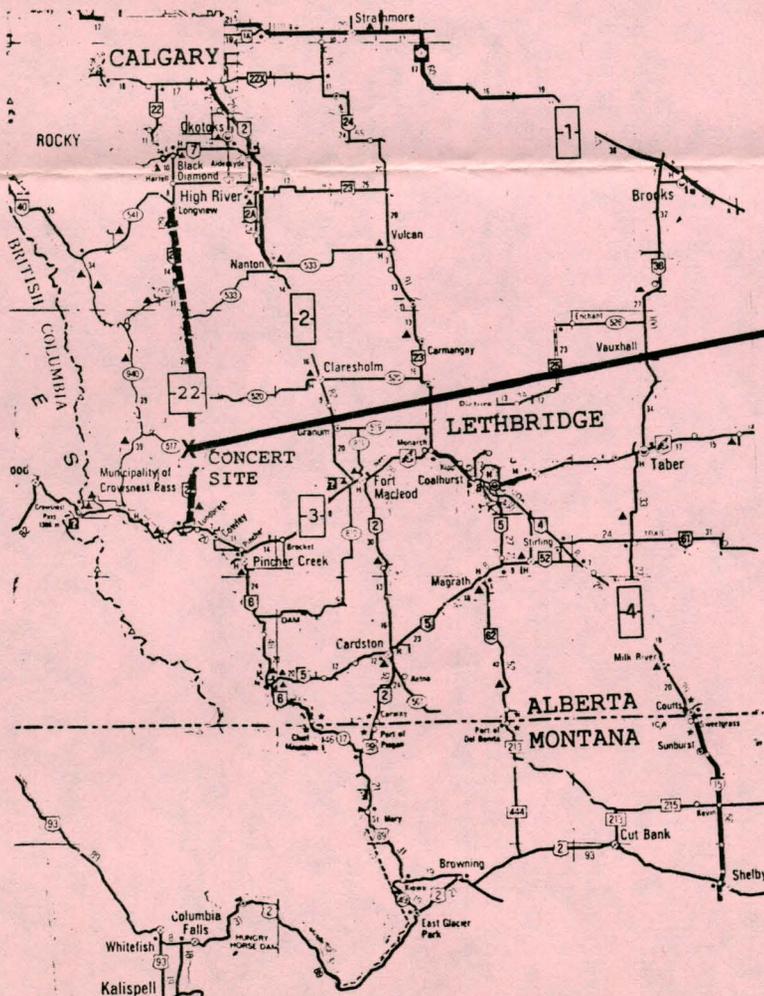
PEIGAN TRIBAL ELDER JOE CROWSHOE

In Support of "Friends of the Oldman River"

Site opens 11:00 AM

Concert 2-5 PM

Free Admission



Maycroft Crossing on Oldman River
Located on Highway #22
24 km (15 mi) N. of Highway 3 Turnoff
87 km (55 mi) south of Longview

Concert goes Rain or Shine
- dress accordingly

Refreshments & Sanitary Facilities

No camping on site but many Campgrounds
available in the area

Call Travel Alberta 1-800-222-6501

For further information call 283-1576 or 252-9668

MANAGED BY EVENTS UNLIMITED

M... ..ed

Mr. & Mrs. J. C. Campbell
R. R. 2
Okotoks, Alberta
TOL 1T0 Ph. 938-7908



Dr. Martha ?? D.V.M.
Rocky Mountain House,
Alberta, Tom-ito

Fax Memo

To: ~~Rod Northey~~ Now

Mark Freiman
416-601-7562
Fax 416-868-1790

From: Martha Kostuch, Friends of the Oldman
River

phone: 403-845-4667

Fax: 403-845-5377

Date: July 4, 1993

Message:

Enclosed is a copy of a letter I sent to the Minister of Public Works and his response.

What is the current status of your battle?

We had cases in both the Court of Queens Bench and Federal Court this past week. Both went well. Both Judges reserved. The Q.B. case was my Charter of Rights application to set aside the intervention and stay of the A.G. of my Fisheries Prosecution. The Federal Court case dealt with our request for a mandamus to force the Federal Gov't to implement the EARP Panel's recommendations under sec 14, + 33(1)(c)(d) of the EARP Guidelines Order.

GOWLING, STRATHY & HENDERSON

BARRISTERS & SOLICITORS • PATENT & TRADE MARK AGENTS

DATE: October 26, 1990

TIME: _____

SENDER: _____

TO: Martha Kostuch, Friends of Old Man River Society, Rocky Mountain House

FROM: Brian A. Crane

STAFF NO.: 091

SWITCHBOARD NO.: 403-845-3668

FACSIMILE NO.: 403-845-5377

MESSAGE OR COMMENTS: Alberta called me today and are prepared to agree that this case be argued in the Supreme Court of Canada during the week of February 19. They will have their factum to us by the end of December and I undertook to produce our factum by the end of January. These dates will be discussed with the Chief Justice at the motion on Monday, but I expect he is likely to agree with this schedule. Alberta expects several provinces to intervene on their side. IF THERE ARE ANY ENVIRONMENTAL GROUPS THAT ARE THINKING OF INTERVENING, THEY SHOULD MOVE VERY PROMPTLY AND COULD CALL US DIRECTLY FOR PARTICULARS.

RE: Friends of Old Man River

FILE NO.: 02/981456

TOTAL NO. OF PAGES _____ INCLUDING COVER MEMORANDUM

<u>OTTAWA</u> <input checked="" type="checkbox"/> 160 Elgin Street Suite 2600 Ottawa, Ontario K1N 8S3 Tel: 613-232-1781 Fax: 613-563-9869 Telex: 053-4114 (HERSON OTT)	<u>TORONTO</u> <input type="checkbox"/> Commerce Court West Suite 3800 Toronto, Ontario M5L 1J3 Tel: 416-862-7525 Fax: 416-862-7661 Telex: 06-23776 (STRATHY TOR)	<u>TORONTO</u> <input type="checkbox"/> 2 First Canadian Place Suite 2400 Toronto, Ontario M5X 1A4 Tel: 416-862-8484 Fax: 416-861-0148 Telex: 06-217546 (HERSON TOR)	<u>KITCHENER</u> <input type="checkbox"/> 50 Queen Street North Suite 1100 Kitchener, Ontario N2H 6M1 Tel: 519-576-6910 Fax: 519-576-6030 Telex: 069-55396 (HERSON KITCH)	<u>CAMBRIDGE</u> <input type="checkbox"/> 19 Thorne Street Cambridge, Ontario N1R 5W1 Tel: 519-621-6910 Fax: 519-621-5028
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Court File No. 21890

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
AS REPRESENTED BY THE MINISTER
OF PUBLIC WORKS, SUPPLY AND SERVICES OF ALBERTA.**

**Applicant
(Respondent)**

and

FRIENDS OF THE OLDMAN RIVER SOCIETY

**Respondent
(Applicant)**

and

MINISTER OF TRANSPORT AND MINISTER OF FISHERIES AND OCEANS

**Respondent
(Respondent)**

A F F I D A V I T

**I, MARTHA KOSTUCH, of Rocky Mountain House, in the Province
of Alberta, MAKE OATH AND SAY AS FOLLOWS:**

- I. I am the Vice-President of the respondent society
incorporated pursuant to the provisions of the Societies Act
in the Province of Alberta and as such I have personal
knowledge of the matters hereinafter deposed to by me.**

- 2 -

2. The Federal Court of Appeal in the judgment appealed from quashed the approval of September 18, 1987 issued by the Minister of Transport pursuant to Section 5 of the Navigable Waters Protection Act, R.S.C. 1985, c. N-22, to the Alberta Department of the Environment granting it permission to carry out works in relation to the construction of a dam on the Oldman River in the Province of Alberta. The Federal Court of Appeal rejected the position put forth by the appellant that it was not bound by the provisions of the Navigable Waters Protection Act and therefore not required to seek an approval under that Act.
3. The Federal Court of Appeal also issued an Order of Mandamus requiring the Minister of Transport to comply with the Environmental Assessment and Review Process Guidelines Order, S.O.R./84-467 (the "Guidelines Order") which it held was a statutory precondition to his grant of an approval under the Navigable Waters Protection Act.
4. The Federal Court of Appeal further issued an Order of Mandamus requiring the Minister of Fisheries and Oceans to comply with the Guidelines Order in discharging his responsibilities under the Fisheries Act, R.S.C. 1985, c.F-14 with respect to the construction of the dam on the Oldman River.

- 4 -

7. On August 18, 1990 I was told by Len Good, Deputy Minister of the federal Department of the Environment, and verily believe that Alberta has indicated to the federal government that Alberta will not participate in any EARP Panel Review instituted as a result of the decision of the Federal Court of Appeal currently under appeal to the Supreme Court of Canada.

8. The appellant has refused to halt construction of the works. The position of the Government of Alberta as reported by the press is that it would not halt construction on the basis of the Federal Court of Appeal decision, that the Federal Court of Appeal erred in holding that the Navigable Waters Protection Act and that a final decision on the matter must await a determination of the Supreme Court of Canada. Attached as Exhibit "B" to my affidavit is a copy of a press report from the Edmonton Journal dated March 14, 1990.

9. Construction of the Oldman River Dam is continuing at the present time. The continued construction has caused great public concern, and it has been the subject of demonstrations by the Peigan Indians to prevent completion of the works.

10. In view of the position taken by the appellant as described above, the effectiveness of the environmental review to be conducted by the EARP Panel on areas of federal responsibility including navigable waters, fisheries and Indian lands and the implementation of measures the Panel may identify to mitigate significant environmental impacts require the resolution of the appeal now before the Supreme Court of Canada.

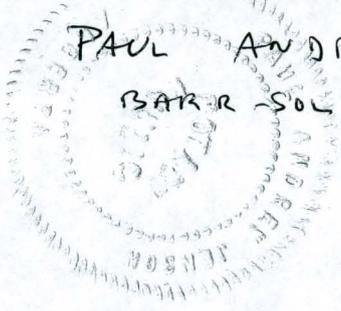
11. I believe that an expedited hearing will protect the integrity of the environmental review process as well as its application in this particular case and that these matters are of national significance and substantial public concern.

SWORN BEFORE ME at the *Town* of)
Rocky mtn *Hor* in the Province)
 of Alberta, this *24* day of)
October, 1990.)
Paul Andrew Jensen)
 A Commissioner for Oaths etc.)

Martha Kostuch

 MARTHA KOSTUCH

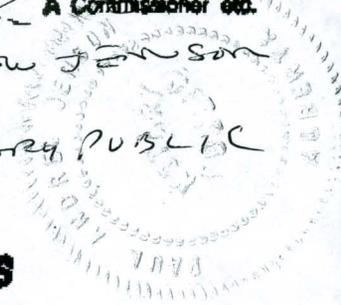
PAUL ANDREW JENSON
 BAR R SOL NOTARY PUBLIC



This is Exhibit "A" to the
affidavit of MARTHA KOSTUCH
sworn before me this 24th
day of October A.D. 19 90

Paul Andrew Johnson
A Commissioner etc.

PAUL ANDREW JOHNSON
BARN-502
NOTARY PUBLIC



**BULLETIN OF INITIAL ASSESSMENT DECISIONS
AND PANEL REVIEWS**

**Federal Environmental Assessment
and Review Process**

Edition 6

**Initial Assessment Decisions
January 1 - March 31, 1990**

**Panel Reviews
January 1 - May 31, 1990**

OLDMAN RIVER DAM



Project Location:

Three Rivers site at Oldman River, southern Alberta

Panel:

To be appointed. Terms of reference being prepared.

Description:

An irrigation project intended to regulate spring flood waters for agricultural and municipal purposes.

Executive Secretary:

Patricia Woodward, FEARO

Vancouver

Tel. (604) 666-2431

Fax (604) 666-6990

Proponent:

Alberta

Initiator:

The Department of Fisheries and Oceans and Transport Canada

RAFFERTY-ALAMEDA DAM PROJECT



Project Location:

Southeast Saskatchewan, near Estevan

Basin Development Authority, the U.S. Corps of Engineers, and Environment Canada, and issued a request for additional information at the end of May.

Description:

Review and make recommendations on the potential environmental and directly related social impacts of the dam project, including possible structural modifications, taking into account Canada's international obligations. The panel will review all information already prepared under the Saskatchewan Environmental Assessment Process, the U.S. National Environmental Policy Act and the Environmental Assessment Review Process.

Panel:

Appointed January 1990

Chairman:

Robert Connelly, FEARO

Members:

Hugh Mackay

Donald Gray

Robert Bell

Eric Moodie

Proponent:

Souris Basin Development Authority

Executive Secretary:

Linda Jones, FEARO

Tel. (819) 953-1858

Fax (819) 994-1469

Initiator:

Environment Canada

Status:

The panel reviewed the environmental impact studies prepared by the Souris

This is Exhibit " B " as referred to in the
Affidavit of Martha Kostuch
Sworn before me this 24 day of
October A.D. 19 90
Paul Andrew Jensen
Commissioner for Oaths (Notary Public) in and
for the Province of Alberta.

PAUL ANDREW JENSEN

Oldman dam work to go on despite ruling

March 14, 1990

Court quashes construction permit

LYNDA SHORTEN
Journal Staff Writer

Edmonton

The Alberta government will not halt work on the \$350-million Oldman River dam, despite a federal court of appeal decision Tuesday quashing its construction permit.

Premier Don Getty told reporters Tuesday that nothing in the court ruling compels his government to stop construction of the southern Alberta dam.

"There is nothing in this decision, absolutely nothing, that indicates the dam work should be stopped."

The federal appeal court ruled Tuesday that Ottawa failed in its duty to hold full public hearings into the environmental impact of the dam, particularly on fish and on Indian lands.

The environmental studies conducted by Alberta did not meet federal standards, the court said, and therefore cannot stand in the place of the required federal review.

The court then quashed Alberta Environment's construction permit, issued by the federal minister of transport in 1987, and ordered Ottawa to conduct a full environmental review.

Getty said the Alberta government will seek leave to appeal the decision to the Supreme Court of Canada.

"I have directed the attorney general to seek an appeal route to that decision, which has other implications."

Attorney General Ken Rostad said the province believes the court wrongly extended federal jurisdiction under the Navigable Waters Protection Act to an Alberta project.

The ruling, if it stands, could extend federal environmental protection standards and reviews to numerous other Alberta projects that do not now fall under that jurisdiction, Rostad said.

As it is now, it's unclear which projects could be affected, he said, adding the ruling would "make life interesting" for any environment minister.

"I think the court actually put the judgment in such a way that they invite an appeal," Rostad said, "and perhaps they themselves would like the Supreme Court of Canada to rule on this and make a final decision."

Public Works Minister Ken Kowalski insisted the judgment was levelled at the federal government and not the province, and therefore the province has every right to go ahead.

"Until the decision is made by someone saying the province of Alberta doesn't have the authority to do that dam, we will continue construction."

The dam is 70 per cent complete, Kowalski said, and the government has already invested \$290 million in the project. Construction will be complete in the fall of 1991.

Environment Minister Ralph Klein acknowledged it is possible that federal Transport Minister Doug Lewis will issue a stop-work order on the dam. However, Klein said Alberta has not yet heard from Ottawa and any such order is still hypothetical.

Asked whether he thought there should be a full review of the dam, Klein said he "didn't want to get into that right now" and he wanted more time to study the ruling.

Court File No.21890

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
AS REPRESENTED BY THE MINISTER
OF PUBLIC WORKS, SUPPLY AND SERVICES OF
ALBERTA

Applicant
(Respondent)

and

FRIENDS OF THE OLDMAN RIVER SOCIETY

Respondent
(Applicant)

MINISTER OF TRANSPORT AND
MINISTER OF FISHERIES AND OCEANS

Respondent
(Respondent)

A F F I D A V I T

GOWLING, STRATHY & HENDERSON
Barristers & Solicitors
160 Elgin Street
Ste. 2600
OTTAWA, Ontario.
K1N 8S3

(613) 232-1781

BRIAN A. CRANE
MARTIN W. MASON
Solicitors for the Respondent
Friends of The Oldman River Society

IN THE FEDERAL COURT OF CANADA

BETWEEN:

FRIENDS OF THE OLD MAN RIVER SOCIETY

APPELLANTS

-and-

MINISTER OF TRANSPORT, and
MINISTER OF FISHERIES AND OCEANS, and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, as
represented by the MINISTER OF PUBLIC WORKS,
SUPPLY AND SERVICES

RESPONDENTS

AFFIDAVIT

I, Martha Kostuch, veterinarian, of the Town of Rocky Mountain House, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am vice-president of the applicant herein (hereinafter referred to as the "Society") which is incorporated pursuant to the provisions of the Societies Act of the Province of Alberta and, as such, I have personal knowledge of the matters to which I hereinafter depose except where stated to be based on information and belief and as to these last said matters I verily believe them to be true.
2. On September 18, 1987, the Respondent Minister of Transport issued an Approval pursuant to the Navigable Waters Protection Act (hereinafter, the "Approval") to the Alberta Department of the Environment for construction of a dam on Oldman River near the Town of Pincher Creek, Alberta (the "Dam"). Attached hereto and marked Exhibit "A" is a copy of the Approval.
3. The Department of Transport did not subject the Dam to an initial screening or environmental assessment prior

to issuing the Approval, pursuant to the Environmental Assessment and Review Process Guidelines Order, S.O.R./84-467 (hereinafter, the "Guidelines Order"), to assess the environmental impacts of the Dam and mitigation measures that may be appropriate.

4. On February 5, 1988, the Alberta Minister of Environment issued Interim Licence # 15410 (hereinafter, the "Licence") to her Majesty the Queen in Right of Alberta as represented by the Minister of Environment, for construction of the Dam. Attached hereto and marked Exhibit "B" is copy of the Licence.
5. Pursuant to the Approval and Licence, the Alberta Department of Environment, through its agent W.A. Stevensen Construction (Western) Ltd. - S.C.I. Engineering Construction Inc. (hereinafter referred to as "Stevensen Construction") has commenced construction of the said Dam. In the course of the said construction, Stevensen Construction diverted the Oldman River in July, 1988, around the site of dam construction, causing one and one-half kilometres of the original streambed to run completely dry.
6. Various species of fish inhabit the Oldman River at or near the proposed site of the Dam, including various subspecies of trout and whitefish. The waters and bed of Oldman River at this location provided these species of fish with habitat for reproduction, rearing, feeding and migration.
7. No environmental assessment of the Dam has been conducted which identifies appropriate mitigation measures and procedures for their implementation.

- 8. The Government of Alberta has developed, without federal government participation, a "Mitigation Opportunities Plan" for the purpose of attempting to mitigate the adverse environmental impacts of the dam construction. The "Mitigation Opportunities Plan" was not an environmental assessment and ^{MSK may be MSK} ~~is~~ not based on the appropriate mitigation measures that could be identified by such an assessment.
- 9. The Government of Alberta has attempted to institute mitigation measures during the course of the dam construction without the benefit of an environmental assessment and the identification of appropriate mitigation measures.
- 10. The measures already implemented by the Government of Alberta for the purposes of mitigation have resulted in additional adverse environmental impacts including substantial damage to fish habitat.
- 11. I swear this Affidavit in support of an Application by the Appellant for an early hearing of this appeal and to set the contents of the Appeal Book.

SWORN BEFORE ME at)
 the ~~City~~ ^{City} of Rocky Mountain House in)
 the Province of Alberta)
 this ~~16~~ day of OCT., 1989.)

Mark H. Testud

H. E. Vankoughnet
 A Commissioner for Oaths
 in and for the Province
 of Alberta.

27/4/90

H. E. VANKOUGHNET
 BOX 1389 TOM 170
 ROCKY MOUNTAIN HOUSE, ALBERTA