

Costs Order 2021-004

Benga Mining Limited Grassy Mountain Coal Project

Costs Awards

December 23, 2021

Alberta Energy Regulator

Costs Order 2021-004: Benga Mining Limited
Grassy Mountain Coal Project

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Benga Mining Limited
Grassy Mountain Coal Project

Costs Order 2021-04
Costs Application 1933290

Introduction

[1] Benga Mining Limited (Benga) submitted an environmental impact assessment (EIA) for the Grassy Mountain coal project to the Alberta Energy Regulator (AER) and the Canadian Environmental Assessment Agency (the Agency) on November 10, 2015. Benga submitted an updated EIA on August 15, 2016. On October 25, 2017, Benga submitted an integrated application to the AER.

[2] Benga submitted applications under the *Coal Conservation Act*, the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act* and the *Public Lands Act* for approval to construct, operate, and reclaim a new open-pit metallurgical coal mine in the Crowsnest Pass area, approximately seven kilometres north of the community of Blairmore in southwest Alberta. The project footprint would have covered 1521 hectares.

[3] The project required an environmental assessment under *EPEA* and was also subject to an assessment under the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)*. The provincial and federal governments established a joint provincial-federal review process to create a cooperative proceeding pursuant to section 18 of the *Responsible Energy Development Act (REDA)* and a joint review panel pursuant to sections 38, 39, 40, and 42 of *CEAA 2012*.

[4] On August 16, 2018, the federal Minister of Environment and Climate Change and the Chief Executive Officer of the AER announced the *Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project*, which established a joint review panel to review the Benga project on behalf of the AER and the Agency. This agreement appointed Mr. A. Bolton as panel chair, and Mr. D. O’Gorman and Mr. H. Matthews as panel members.

[5] On June 29, 2020, we (the joint review panel) issued a notice of hearing.

[6] We conducted a public hearing that opened on October 27, 2020, using electronic means. The oral portion of the hearing continued for 29 sitting days and concluded on December 2, 2020. Alberta’s Aboriginal Consultation Office provided its hearing reports on December 3, 2020, and hearing participants provided final arguments in writing thereafter. We closed the hearing record on January 15, 2021.

[7] On June 17, 2021, we issued our decision report: *Decision 2021 ABAER010/CEAA Reference No. 80101: Report of the Joint Review Panel, Benga Mountain Limited, Grassy Mountain Coal Project*.

Canadian Environmental Assessment Agency Participant Funding Program

[8] In August 2019, the federal *Impact Assessment Act* came into force and repealed *CEAA 2012*. At that time the Canadian Environmental Assessment Agency became the Impact Assessment Agency of Canada. However, pursuant to section 181(1) of the *Impact Assessment Act*, the review of this project continued under *CEAA 2012* as if that Act had not been repealed. For our purposes, we refer to both the

Canadian Environmental Assessment Agency and its successor, the Impact Assessment Agency of Canada, as the Agency.

[9] The Agency provided financial support to participants in the hearing through its Participant Funding Program. The Agency allocated a total of \$745,983.07 to assist 13 recipients in their participation in the environmental assessment for the Grassy Mountain coal project, including the public hearing.

[10] Costs claims were also submitted to the AER from three Participant Funding Program recipients:

- the Coalition of the Alberta Wilderness Association and Grassy Mountain Group (the Coalition): allocated \$38,213.83 in Participant Funding Program funding
- the Canadian Parks and Wilderness Society – Southern Alberta Chapter (CPAWS): allocated \$13,865.00 in Participant Funding Program funding
- the Shuswap Indian Band: allocated \$21,585.50 in Participant Funding Program funding

AER advance funding

[11] On September 6, 2020, the panel, in our capacity as the AER, received a request for advance funding from the Coalition of the Alberta Wilderness Association and Grassy Mountain Group (the Coalition) in relationship to their participation in the hearing. We awarded advance funds to the Coalition in the amount of \$182,518.59 on October 19, 2020.

AER costs claims

[12] We received costs claims from the following participants in relationship to their participation in the hearing:

- the Coalition
- CPAWS
- the Livingstone Landowners Group (LLG)
- the Timberwolf Wilderness Society (Timberwolf)
- the Municipal District of Ranchland No. 66 (Ranchland)
- Barbara Janusz
- the Shuswap Indian Band

Summary of costs awarded

[13] In exercising our discretion to make this order, we considered all submissions made in this costs process, including Benga's responses to each costs claim, and the reply submissions of the Coalition, CPAWS, the LLG, Timberwolf, Ranchland, and Barbara Janusz.

[14] We award the Coalition an additional \$195,871.39 for fees, expenses, honoraria, disbursements, and GST, after considering their advance cost award of \$182,518.59.

[15] We award CPAWS \$77,683.45 for fees, expenses, disbursements, and GST.

- [16] We award the LLG \$240,347.07 for fees, expenses, honoraria, disbursements, and GST.
- [17] We award Timberwolf \$60,288.85 for fees, expenses, honoraria, disbursements, and GST.
- [18] We award Ranchland \$109,564.96 for fees, expenses, disbursements, and GST.
- [19] We award Barbara Janusz \$2,200.00 for fees and honoraria.
- [20] We award the Shuswap Indian Band \$400.00 for honoraria.

AER's Ability to Award Costs

[21] The AER has broad discretion when deciding whether and how to award costs. Section 64 of the *REDA Rules of Practice* states:

The Regulator may award costs to a participant if it finds that it is appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

[22] In determining who is eligible to submit a claim for costs, the AER is guided by the *Rules of Practice*, particularly sections 58(1)(c) and 62:

58(1)(c) “participant” means a person or a group or association of persons who have been permitted to participate in a hearing for which notice of hearing is issued or any other proceeding for which the Regulator has decided to conduct binding dispute resolution, but unless otherwise authorized by the Regulator, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.

(2) A participant may claim costs only in accordance with the scale of costs.

(3) Unless otherwise directed by the Regulator, a participant shall (a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and (b) serve a copy of the claim on the other participants.

(4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.

(5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

[23] When assessing applications for an award of costs, the AER is guided by Division 2 of Part 5 of the *Rules of Practice* and *Directive 031: REDA Energy Costs Claims*.

[24] Section 58.1 of the *Rules of Practice* states:

The Regulator shall consider one or more of the following factors when making a decision in respect of an application by a participant for an advance of funds request, an interim award of costs, or a final award of costs:

- (a) whether there is a compelling reason why the participant should not bear its own costs;
- (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
- (c) in the case of an advance of funds, whether the submission of the participant will contribute to the binding dispute resolution meeting or hearing;
- (d) in the case of interim costs, whether the participant,
 - (i) has a clear proposal for the interim costs, and
 - (ii) has demonstrated a need for the interim costs;
- (e) whether the participant has made an adequate attempt to use other funding sources;
- (f) whether the participant has attempted to consolidate common issues or resources with other parties;
- (g) in the case of final costs, whether an advance of funds or interim costs were awarded;
- (h) whether the application for an advance of funds or for interim or final costs was filed with the appropriate information;
- (i) whether the participant required financial resources to make an adequate submission;
- (j) whether the submission of the participant made a substantial contribution to the binding resolution meeting, hearing or regulatory appeal;
- (k) whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant's submission;
- (l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Regulator;
- (m) the conduct of any participant that tended to shorten or to unnecessarily lengthen the proceeding;
- (n) a participant's denial of or refusal to admit anything that should have been admitted;
- (o) whether any step or stage in the proceedings was
 - (i) improper, vexatious, or unnecessary, or
 - (ii) taken through negligence, mistake, or excessive caution;
- (p) whether the participant refused to attend a dispute resolution meeting when required by the Regulator to do so;
- (q) the participant's efforts, if any, to resolve issues associated with the proceeding directly with the applicant through a dispute resolution meeting or otherwise;

(r) any other factor that the Regulator considers appropriate.

[25] The panel agreement directed us to conduct a public hearing in a manner that provided opportunities for timely and meaningful participation by the public. The panel agreement also directed us to take into account, to the extent practicable, the participant funding decisions made under the Agency's Participant Funding Program when making decisions under the AER's costs regime.

General Approach Taken by the Panel

[26] In evaluating the costs claims for this proceeding, we were guided by the rules set out in relevant legislation and by the guidance provided in *Directive 031: Responsible Energy Development Act Energy Costs Claims*.

[27] We also took into consideration earlier precedents by AER hearing panels in costs orders for other proceedings. However, we are not bound by these precedents and the rules do not provide a "cookie cutter" approach to adjudicate costs claims. We applied the costs rules to the facts in this proceeding and applied our judgment as to which costs claimed by various participants should be reasonably and fairly reimbursed. In addition to considering the submissions of the parties, we evaluated the extent to which each claim complied with the *Rules of Practice* and *Directive 031*.

[28] We discuss how we considered the factors in section 58.1 of the *Rules of Practice*, as they apply to the facts of each costs claim, in the sections that follow for each participant. Here, we provide some overall direction on how we applied these factors.

[29] We consider these three factors to be somewhat related:

- (a) whether there is a compelling reason why the participant should not bear its own costs
- (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement, and wise use of the environment through individual actions
- (c) whether the participant has made an adequate attempt to use other funding sources

[30] These factors suggest that participants in a hearing process (other than the project proponent) have a responsibility to bear some of their own costs to participate. We agree that the project proponent is not responsible to fund all of the costs of those who have been granted participation status in a hearing.

[31] A participant's ability to fundraise can assist with the financial burden of participation. However, costs claimed under the AER cost process are generally a subset of the total costs that participants incur throughout a proceeding. For example, many of the participants in this proceeding engaged in the regulatory process for years, before we issued a notice of hearing in June 2020. Section 58.1(c) provides that a person, group, or association of persons is not considered to be a "participant" until the notice of hearing has been issued. Therefore, costs incurred before we issued a notice of hearing are not eligible for reimbursement. Such costs must be borne by those who were granted participation status after we issued the notice of hearing. This is one example of a cost of participation for which fundraising may be needed.

[32] Several of the participants with the ability to fundraise were environmental nongovernmental organizations. Benga argued in response to several cost applications that such organizations should not be

eligible for costs, given their mandate is to oppose industrial development. For example, in response to the costs claim from CPAWS, Benga stated that “CPAWS should not be awarded any costs for its role in the hearing, as its participation falls within its mandate as an environmental charitable organization.” We reject Benga’s argument on this point. There is no inherent reason that an organization with an explicit mandate to protect the environment should be ineligible to receive costs in an AER proceeding, and the factors guiding our decision-making on costs claims do not specify any such condition. Furthermore, to the extent that such groups were able to successfully fundraise, we accept that these funds were needed to support their participation costs, which exceeded the amounts claimed in their costs claim submission.

[33] In one case in which a participant failed to apply for potential funding from the federal Participant Funding Program, we applied a small discount to that costs claim. While funding under the federal program is a relevant consideration under the *Rules* and the joint review panel agreement, a participant did not need to provide us with a strict accounting of its distribution of costs between the AER cost process and the funding received from the federal program. Our role is not to audit the use of federal funding by participants, considering that the federal program has different terms and conditions than the AER costs claims process. We generally only examined whether a participant appeared to be explicitly “double-dipping” by using funding from both programs to pay for the same work. We did not find any obvious examples of such double-dipping.

[34] Next, we consider these two factors to be somewhat related:

(i) whether the participant required financial resources to make an adequate submission;

(k) whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant’s submission;

[35] These factors speak to what level of resources (financial, expert analysis, counsel time) are required for a participant to effectively participate and provide us with useful information to help us make our decision. We find that this proceeding was highly complex and addressed a broad range of highly technical topics, and that each topic required in-depth analysis to understand the potential impacts of the project. Furthermore, the record for this proceeding was extensive, complex, and technical, beginning with an initial EIA in 2016 and supplemented by 12 addenda over the next four years, totalling approximately 24,000 pages. Hundreds of other relevant submissions were also on the record at the time we issued the notice of hearing. The record then grew further over the course of the public hearing, up until the close of the record on January 15, 2021. We acknowledged in our decision that Benga’s EIA and 12 addenda were not well organized, and it was not always easy for participants to determine whether earlier analysis had been replaced or updated with later analysis (as happened on several technical issues).

[36] Several participants made this point in their costs claims. For example, CPAWS submitted that its preparation time for the hearing was large because Benga chose to advance to the hearing with a cluttered and unorganized EIA, which increased the time required for counsel and experts to familiarize themselves with Benga’s submissions and prepare their own evidence and cross-examination material. CPAWS stated that the time spent by experts and counsel in reviewing transcripts and observing the hearing was necessary to improve efficiency of the hearing process and avoid repetition.

[37] We find that it was reasonable for participants, and their experts and counsel, to spend a significant amount of time evaluating the information on the record to prepare their own analyses and participate in the hearing. The length of the process and the size of the record were demanding. Ensuring experts and counsel understand the information on the record is an important element of an efficient hearing process, avoids duplication of submissions, and provides us with information that helps us make our decisions.

[38] In response to many of the costs claims, Benga argued that certain costs claimed by the participants (whether for legal fees or expert witness fees) were not directly necessary for their participation and were not proportionate to their role in the hearing. We are of the view that whether an activity or information was “directly necessary” depends on whether the activity or information helped us understand the potential impacts of the project.

[39] Benga responded to several costs claims with a formula it devised to evaluate whether the time claimed by counsel or expert witnesses was reasonable and proportionate to their role in the hearing. The formula was a ratio of the claimed hours to the time that we allocated to each participant at the hearing for their presentation of evidence and cross-examination. For example, in response to the costs claim from the Coalition, Benga submitted the following:

The Coalition claimed professional fees for a combined total of **1,936.41 hours**. The Panel allocated the Coalition a total time of approximately **34.5 hours** for cross-examination and direct evidence. The Coalition is therefore claiming professional fees for approximately **76 hours of services for every 1 hour** of time it was allocated at the hearing.

[40] As an alternative, Benga essentially linked its determination of reasonableness to the number of hours we awarded a participant for direct evidence and cross-examination during the public hearing.

[41] All the participants to whom Benga applied this formula rejected this approach as without merit, and unrealistic with respect to the amount of preparation time and review of the record needed by counsel and expert witnesses. Several of the participants argued that such a formula is an unprecedented invention by Benga, without basis in other decisions that have been made on other applications in the AER costs claim process. For example, the LLG responded to this proposal by Benga by stating:

With respect, the LLG submits that this “analysis” has no precedent in any cost decision we are aware of and is (not to put too fine a point on it) bogus. First, there is no rational basis for combining the LLG’s legal fees and professional expert witness fees into a single lump sum. Second, the idea that the overall quantum of costs awarded should be based on the number of hours spent actively examining witnesses also has no rational basis.

[42] The Coalition and the LLG each suggested an alternative calculation that could be applied to evaluate reasonableness to demonstrate that their claimed hours for professional services were justifiable.

[43] We agree with the participants that the formula applied by Benga was unreasonable and would not have allowed counsel and the expert witnesses to adequately prepare for and participate in the hearing in a manner that would help us understand the issues before us. The time allocation for presentation of evidence at the hearing does not necessarily reflect the importance of an issue, or the level of effort required to undertake an adequate analysis of the issue. When we allocated hearing time to participants at

the hearing, we did not apply an explicit formula based on the importance of the presentation or level of effort involved in its preparation. We also did not explicitly adopt the alternative formulas suggested by the Coalition or the LLG. Instead, we applied our judgment in examining claimed preparation time to evaluate whether it was reasonable and directly and necessarily related to matters contained in the notice of hearing. In the following sections of this decision, we discuss whether we find the amount of preparation time in the various costs claims submitted by each participant to be reasonable.

[44] Next, we consider the following factor:

(f) whether the participant has attempted to consolidate common issues or resources with other parties;

[45] Several participants submitted that they attempted to coordinate with other participants to divide issues between themselves, in terms of their areas of focus during the process. Experts prepared reports for different participants that generally addressed different technical issues in the review process. When they addressed the same technical issue, the expert reports generally addressed different aspects of that issue. We accept that in a process such as this, some overlap is unavoidable. However, we are satisfied that participants attempted, in good faith, to minimize unnecessary duplication of evidence.

[46] Consistent with this principle, we agree that it was reasonable for expert witnesses to observe at least some portion of the hearing sessions that covered their topic area before appearing before us. This allowed the experts to understand the evidence that had already been discussed at the hearing and make better use of their presentation time. For many participants, Benga argued that their expert witnesses should only be awarded costs for hearing attendance for the exact amount of time that their presentation required, plus an additional one or two hours at most. We do not agree with Benga's argument on this point. However, we did find that in a small number of costs claims, expert witnesses observed the hearing for an unreasonable amount of time, and in those cases we are disallowing a portion the claimed hours.

[47] Next, we consider the following factor:

(j) whether the submission of the participant made a substantial contribution to the binding resolution meeting, hearing or regulatory appeal;

[48] Several participants in this costs claim process identified this as being a particularly important factor for us to consider. For example, CPAWS replied that costs must be earned with reference to this factor, along with factor (l). CPAWS stated that the panel is not obliged to consider all the listed factors in section 58.1, and an applicant for costs does not need to meet all or even most of the factors.

[49] We consider this factor in section 58.1(j) to be particularly important, and it was the key factor we applied in considering costs claims from the various participants. A primary objective of the hearing process is for the panel to receive the information and evidence necessary for us to fully understand the issues, so we can make our decision on the applications. We acknowledge that different participants may, in good faith, have different interpretations of what information is necessary to inform our decision. Although Benga disputed several costs claims as reflecting activities that did not make a substantial contribution to our decision, we generally found that the information we received was useful and made a substantial contribution to our understanding of the issues before us. In situations where we find this was not the case, we disallow a portion of the hours claimed in the costs application.

[50] Furthermore, we agree that it was reasonable for the expert witnesses to assist counsel with technical issues in preparing final arguments or questions for cross-examination. For a proceeding such as this, with a large amount of highly technical information and evidence to assess, the involvement of technical experts in constructing final arguments can help improve the accuracy and usefulness of the final arguments. We reject Benga's contention that expert witness costs to assist in final arguments or drafting cross-examination questions should not be eligible for an award of costs.

[51] Finally, we consider these three factors to be somewhat related:

(l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Regulator;

(m) the conduct of any participant that tended to shorten or to unnecessarily lengthen the proceeding;

(o) whether any step or stage in the proceedings was

(i) improper, vexatious, or unnecessary, or

(ii) taken through negligence, mistake, or excessive caution;

[52] Generally, we found that participants in this process acted responsibly, were efficient in the use of time allocated to them, and acted in good faith. We did not observe explicit attempts to needlessly delay or act vexatiously or improperly.

[53] Other factors identified in section 58.1 of the *Rules of Practice* but not mentioned above did not play a large role in our review. If one of these other factors was relevant in considering a specific costs claim, we discuss it in the appropriate section of this report.

Costs Claim of the Coalition

[54] The Coalition submitted a costs claim for \$566,579.47, broken down as follows:

• legal fees	\$308,988.00
• expert and analyst fees	\$229,077.50
• honoraria	\$2,100.00
• disbursements and expenses	\$1,638.44
• GST	\$24,775.53

[55] The Coalition received an award of advanced costs of \$182,518.59 prior to the public hearing in response to an application for advanced costs submitted to the AER. The Coalition and its individual members also received a total of \$38,213.83 in funding from the federal Participant Funding Program, of which it allocated \$21,600.00 to reduce its costs claim to the AER.

Cost factors and principles

[56] The Coalition submitted that its cross-examination, pre-filed evidence, oral evidence, and written final argument contributed in a meaningful way to the panel's understanding of the issues and its deliberations. The Coalition submitted that its costs claim was in accordance with the scale of costs in *Directive 031*.

[57] The Coalition submitted that there was no duplication of effort. The Coalition members — the Alberta Wildlife Association (AWA) and the Grassy Mountain Group — elected to coordinate their efforts as an intervener group to minimize costs and avoid duplication of effort. The Coalition noted that it had coordinated with counsel for CPAWS, the LLG, and Ranchland in seeking and retaining expert evidence and in streamlining the presentation of evidence to further avoid duplication.

[58] The Coalition stated that it had made use of the federal Participant Funding Program and provided a breakdown showing how the amounts awarded were allocated.

[59] The Coalition noted that it had not claimed legal fees for time spent prior to the issuance of the AER's notice of hearing, but had claimed certain expert fees relating to pre-notice expert costs. The Coalition submitted that, due to the complexity of the hearing, it was reasonable for experts to spend time reviewing the application materials, providing comments on the environmental impact statements, and preparing information requests.

[60] The Coalition submitted that the cost of participating in a review and public hearing of a project as complex as the Grassy Mountain project is significant. Requiring Coalition members to bear the costs of their participation for this project would create undue hardship for the members. Similarly, requiring the AWA to use the majority of its operating expenses to fund participation in this proceeding would significantly affect its ability to satisfy other aspects of its mission and objectives.

[61] Benga submitted that a reasonable costs claim must be proportionate to the matter the costs relate to and a participant's participation in a proceeding. Benga argued that the Coalition's costs claim in its totality was not proportionate and not reasonable. Benga also argued that the costs claimed for each professional considered on their own are likewise grossly disproportionate and unreasonable.

[62] Benga objected to the Coalition's proposed allocation of the \$10,753.83 in unallocated funds from the federal Participant Funding Program to the work of AWA employees. Benga submitted that the AER does not award costs for services provided by a participant's personnel in the normal course of their duties, and the AER has clarified in the past that a claimant will only recover costs with respect to an expert or consultant's work if the claimant would not have hired the individual to do the work "but for" the claimant's participation in the hearing. Benga argued that, because the AWA staff conducted this work in the normal course of their duties, they are ineligible for a costs award and the unallocated federal funding should be deducted from any AER final costs award.

[63] Benga submitted that claimed costs must have been directly and necessarily required for the claimant to appropriately participate, and AER costs awards are not intended to fully indemnify a participant for costs incurred. Benga further submitted that the AWA had significant funds available to support its hearing participation, and the AWA generated funding for future endeavors through its role at the hearing.

[64] In responding to Benga's submissions, the Coalition stated that the costs claimed by the Coalition will not fully indemnify Coalition members. The Coalition submitted that its members devoted a significant amount of time and effort to the project review prior to the AER's issuance of a notice of hearing on June 29, 2020. Individual members spent time reviewing Benga's application materials, preparing and filing statements of concern with the AER, and providing comments to the Agency regarding the project. The Coalition stated that individual members have not claimed any costs relating to

this time, and this reflects the Coalition member's shared responsibility for ensuring the protection, enhancement, and wise use of the environment.

[65] The Coalition submitted that the AWA has contributed a significant amount of time and effort in relation to reviewing the project. The Coalition estimated that AWA staff spent at least 727.1 hours (at an estimated cost of \$38,827.14) assisting the Grassy Mountain Group regarding this project. The Coalition submitted that the AWA can only recover a small portion of these costs through the federal Participant Funding Program.

[66] The Coalition submitted that the professional fees claimed are reasonable and the metric applied by Benga in its submissions is not useful, considering how poorly the Benga application was assembled and the large volume of materials that form the record for the proceeding. The Coalition referenced an Alberta Environmental Appeals Board costs decision, *Costs Decision: Imperial Oil and Devon Estates (September 08, 2003), Appeal No. 01-062-CD (AEAB)*, that stated that one hour of hearing time can require up to ten hours of lawyer preparation time. The Coalition noted that the Ackroyd hearing preparation and hearing hours from June 29 to December 2 totalled only 2.7 hours of preparation for each hour of the hearing.

[67] We find that the Coalition's participation in this proceeding was consistent with a number of the key factors and considerations we discussed in the section of this report on the general approach taken by the panel.

[68] The Coalition represented two different groups, the AWA and local landowners in the Grassy Mountain Group. The range of issues of concern to these Coalition members was broad, given that local landowners had distinct concerns (for example, property access) that may not have been as urgent to the AWA. The fact that Benga included the properties of two landowners in the Grassy Mountain Group within its proposed mine permit boundary demonstrates the urgency for these Coalition members to draw attention to issues that may not have been a concern for other participants.

[69] We therefore consider the efforts of the AWA and the Grassy Mountain Group to have formed a Coalition, and the sharing of counsel and expert witness time between the two Coalition members, to be a good example of coordination among potential participants in this process.

[70] The Coalition brought forward a large number of complex issues for consideration, and we found that its efforts were generally useful and relevant in making our decision.

[71] Coalition members, both individuals and AWA staff members, spent time and resources on this proceeding that are not eligible in this costs claim, including time before we issued the notice of hearing. The Coalition also generally attempted to be efficient and coordinate with other participants.

[72] In some cases, we found that the Coalition's counsel or expert witnesses claimed an excessive or unreasonable amount of time, and that they could probably have been more efficient in their use of time. Where this was the case, we discuss it in the appropriate sections.

[73] While Benga suggested that the unallocated amount of \$10,753.83 in federal funding received by the Coalition should be subtracted from the Coalition's costs claim, the Coalition has accounted for how it used the federal funding, and we find the accounting was generally acceptable. We are of the view that if the federal funding program, which has different criteria than the AER costs claim process, allows for that

use of funds, then we do not need to “claw it back” from consideration of AER-eligible costs. If the Coalition is allowed to direct federal funding toward AWA staff time, this does not affect our assessment.

[74] We find that the fact that the AWA had the ability to fundraise to offset some of their costs was relevant to their ability to fund their participation, consistent with the principle that all participants have a shared responsibility to participate. However, we did not find Benga’s selected highlights of the AWA’s financial position to be compelling, because our role is not to audit the financial statements of any participant. As we discussed in the section on the general approach taken by the panel, the claimed costs are only a subset of the costs that the Coalition incurred throughout this proceeding, and we disallow some elements of the Coalition’s costs claim. It is reasonable for a participant to raise funds that can help offset ineligible costs.

[75] We discuss other important principles that informed our decision in each of the following sections.

Legal fees

[76] The Coalition, which retained the services of Ackroyd LLP for this proceeding, submitted a claim of \$325,965.60 for legal fees, disbursements, and GST. The claim reflects a reduction of \$4,800.00 in fees as a result of allocation of funding from the federal Participant Funding Program for preparation time. We found minor calculation discrepancies in the forms that the Coalition submitted, but they are not material.

[77] Richard Secord (40-plus years of experience) and Ifeoma Okoye (8-plus years of experience) were primarily responsible for representing the Coalition in this proceeding. Both counsel were responsible for preparing, reviewing, and filing the Coalition’s intervener evidence, leading meetings with Coalition members and experts, instructing the Coalition’s experts, and preparing for and attending the hearing on behalf of the Coalition. Emily Bonnell (1-plus years of experience) assisted Mr. Secord and Ms. Okoye on a limited basis, primarily to conduct research.

[78] The Coalition submitted that responsibilities were shared between counsel to minimize duplication of effort, and that each counsel took responsibility for different topic areas.

[79] The Coalition argued that its legal costs and disbursements are reasonable and economical and that the hourly rates charged for legal counsel and legal services reflect the scale of costs in *Directive 031*. The Coalition submitted that the circumstances of the hearing, including its scope and complexity, extent of documentation filed on the Agency registry, and the number of participants, warranted the use of two counsel. The Coalition had the largest number of expert witnesses of all participants, and fully participated in six out of the seven topic blocks for the hearing.

[80] Benga noted that the AER has stated in previous costs orders that experienced, capable practitioners such as those retained by the Coalition are expected to demonstrate a high level of expertise and efficiency and that only in exceptional circumstances would the AER award costs for attendance at the hearing by more than one lawyer.

[81] Benga noted that the Coalition claimed costs for three lawyers. It submitted that, considering the time approved by the panel for direct evidence and cross-examination by the Coalition (9 and 25.5 hours, respectfully), the total of 992.66 hours (124.1 eight-hour workdays) claimed for legal services was disproportionate, unreasonable, and demonstrated a lack of efficiency. Benga argued that,

notwithstanding the length and complexity of the hearing, the costs claimed in relation to Ackroyd LLP's preparation, attendance, and argument required a significant reduction.

[82] Benga submitted that there were no exceptional circumstances to justify why the Coalition required two experienced lawyers for preparation, attendance, and argument, plus the assistance of a third in preparation and argument. Benga noted that, while the hearing was long and involved complex issues, the same was true for the hearing held to review Teck Resources Limited's Frontier Oil Sands Mine project. Benga noted that the AER costs order for that hearing emphasized that, even in the exceptional cases where two counsel are appropriate, the second counsel should be a junior lawyer. Benga suggested that the hours claimed by counsel should be reduced for Mr. Secord and Ms. Okoye by 50 per cent, and all costs be denied for a third counsel. Benga proposed that the fees should be set at the maximum rate for the senior counsel and the appropriate rate for a second counsel (a junior lawyer's rate).

[83] Benga noted that the professional fees claimed for preparation suggested that there was no attempt to avoid duplication and to exercise efficiency in preparation between June 29, 2020, and the commencement of the hearing on October 27, 2020. Benga noted that, in the Ackroyd LLP statement of account, both Mr. Secord and Ms. Okoye list significant amounts of time reviewing and responding to communications from witnesses who submitted reports and gave direct evidence in each other's allocated topic blocks.

[84] Benga noted that the 473.9 hours claimed for attendance at the hearing are the equivalent of 59.2 eight-hour workdays and this means that each lawyer essentially claimed nearly 30 eight-hour workdays of hearing attendance. Benga argued that granting costs for those hours would be unreasonable, given that the hearing lasted for only 29 days. Furthermore, Benga submitted that Ackroyd LLP's statement of account for hearing attendance shows duplicated work.

[85] Benga submitted that counsel for the Coalition often cross-examined for several hours at a time on issues not relevant to the panel's mandate. Benga argued that much of Ackroyd LLP's attendance at the hearing did not contribute to a better understanding of the issues before the panel and was not helpful to the panel; rather, their participation unnecessarily lengthened the proceeding.

[86] Benga submitted that much of the time claimed in Ackroyd LLP's statement of account as it relates to final argument was spent reviewing emails from the Coalition's expert witnesses and this is reflected in the substantial amount of time claimed by Coalition experts for their role in the argument at the hearing. Benga noted that Mr. Secord billed 128.5 hours for drafting a final argument. Benga submitted that drafting submissions should be assigned to a junior lawyer or articling student if a party is claiming exceptional circumstances requiring more than one counsel.

[87] Benga noted that Ackroyd LLP also charged fees for 1.8 hours of time spent reviewing and distributing Benga's reply argument to its clients on January 15, 2020, after it had submitted its final argument on January 8. Benga submitted that this post-hearing review of reply arguments and discussions with its client do not qualify for an award of costs.

[88] Benga submitted that the Coalition's claims for disbursements in the amount of \$1,288.20 plus GST should be significantly reduced. The claimed disbursements for internal photocopying (\$801.90) and scanning (\$6.30) were not supported by receipts or any further description and, given the electronic nature of the proceedings, were not justified. Additionally, while *Directive 031* gives the AER discretion to

consider claims for a specified list of office disbursements incurred through a proceeding, including long-distance telephone calls, it does not include “conference calls.”

[89] Responding to Benga’s submissions about duplication, the Coalition stated that the COVID-19 pandemic required counsel to work remotely, and that the only way to ensure that both counsel were up to date on the file was by copying each other on emails. The Coalition submitted that in such a situation, it is difficult to completely eliminate some duplication. The Coalition also submitted that Zoom meetings with clients and experts required both counsel to participate in strategy sessions and share ideas, and this eliminated the need for counsel to have individual meetings with each client and each expert.

[90] Responding to Benga’s submissions about the amount of time claimed for hearing attendance, the Coalition submitted that not all of the time claimed was spent attending the hearing. The attendance time included non-hearing time spent by counsel reviewing materials and preparing for cross-examinations and direct evidence for the next hearing session.

[91] The Coalition stated that the issues upon which it spent time at the hearing were relevant to the panel’s mandate.

[92] The Coalition submitted that it is not reasonable to assign an articling student to write a final argument in such a complex case. Rather, it would have been more efficient for Mr. Secord and Ms. Okoye to write the final arguments for the topic blocks on which they took the lead.

[93] We break down the Coalition’s claim for legal fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we considered primarily whether the hours were reasonable and necessary to support the Coalition’s contribution in this hearing. However, because comparing a participant’s claim to those of other participants can be useful, we also provide this comparison where appropriate:

- Preparation: 278.26 hours (34.8 days). Among the various costs claims that we reviewed, this was one of two claims for legal fees for the preparation period that were considerably higher than all other claims for this period.
- Attendance: 473.9 hours (59.2 days). Among the various costs claims that we reviewed, this was one of two claims for legal fees for hearing attendance that were considerably higher than all other claims for this period.
- Argument: 240.5 hours (30.1 days). Among the various costs claims that we reviewed, this was by far the highest claim for legal fees for preparing a final argument.

[94] Although several participants made use of more than one legal counsel, the Coalition was the only participant to use a second counsel with a relatively high number of years of experience (Ms. Okoye, with 8 years). Unlike other participants, the Coalition divided the responsibility for its large number of technical areas between these two relatively senior counsels.

[95] Benga argued that the second counsel for this participant should only be reimbursed at the junior lawyer rate, and there are no special circumstances that merit the attendance at the hearing of a second, relatively senior counsel.

[96] As explained in the section on the general approach taken by the panel, this proceeding was highly complex and addressed a broad range of technical topics, and the record was extensive and not well organized. Given the number of issues on which the Coalition provided expert evidence and conducted cross-examination, and the size and complexity of the record for this proceeding, we find that the use of a second, relatively senior counsel was reasonable for the Coalition. We do not consider the two counsel to have significantly overlapped in their participation in this proceeding. By dividing the issues between them, Mr. Secord and Ms. Okoye were fairly efficient in their approach.

[97] In all costs claims we reviewed for this proceeding for which a participant included legal fees for more than two counsel, we are disallowing the hours from the additional junior counsel. We consider that the AER costs claim process is not intended to support a legal team of more than two lawyers. If the Coalition legal team determined that it needed additional support from junior lawyers, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing. We therefore disallow the 13.5 hours claimed by Ms. Bonnell for the preparation period before the hearing commenced, and we disallow the 2.7 hours that she claimed for the final argument period.

[98] Benga submitted that the two senior Coalition counsel duplicated some effort in the preparation period before the hearing commenced. We accept the Coalition's reply that it was impossible to completely eliminate overlap, given the need to prepare for the hearing remotely during the COVID-19 pandemic. There was a large amount of material to review and prepare for, considering the broad and diverse range of issues on which the Coalition prepared evidence, particularly because the Coalition included landowners adjacent to the project with concerns that were distinct from those of most other participants. We are therefore granting 264.76 of the 278.26 hours in legal fees claimed by the Coalition during preparation but before the hearing (all the hours claimed by Mr. Secord and Ms. Okoye).

[99] For the period of the public hearing (October 27 to December 2, 2020), participants who submitted costs claims for legal fees did not always clearly distinguish between hours spent at the hearing, and hours spent in preparation (for example, preparing witnesses to give evidence, or developing questions for cross-examination). In the discussion that follows, we consider all hours spent during this period as hearing attendance hours, recognizing that these hours include time spent participating at the hearing as well as hours spent preparing outside the hearing. Because some hearing days were longer or shorter than others, we treated a hearing day as being 8 hours in length, on average.

[100] We find that 59.2 eight-hour days of time for attendance at the hearing is excessive, given that the hearing itself involved only 29 days of sitting time. We understand that counsel required preparation outside of the actual time the hearing is in session, but the Coalition's claim for this time period effectively represents an extra full day of preparation after attending a full day of the hearing, despite having divided up issues between the two counsel representing the Coalition.

[101] We find that a reasonable amount of time for Coalition counsel to prepare for each day's hearing would represent an extra 30 per cent of actual hearing time, as the Coalition was closely engaged across a broad range of the topics before the panel. This translates to an average additional time of 2.4 hours in the evening to prepare for upcoming hearing days, after spending a full 8 hours at the hearing. On some days preparation would have required more time (such as when a Coalition expert was scheduled to appear the following day), and on other days less. Our approach is independent of whether the Coalition used just

one counsel or divided its issues and concerns between two counsel. We are granting a maximum of $29 \times 1.3 = 37.7$ days, or 301.6 hours, for legal fees for the hearing period. If the Coalition legal team determined that it needed to spend more time for hearing participation — for instance, by preparing for more than an average of 2.4 hours for upcoming hearing days — then it is reasonable for the Coalition to bear this additional cost as part its shared responsibility for the costs of participating in an AER hearing. We are therefore disallowing 172.3 hours of the Coalition’s claimed 473.9 hours for hearing attendance. Because Mr. Secord and Ms. Okoye split the hearing topics between them, and both claimed a similar number of hours for hearing attendance, we are splitting the total amount of hours between them, granting 150.8 hours for hearing attendance to each of Mr. Secord and Ms. Okoye.

[102] We find that the level of effort reflected in the costs claim for preparing the final argument was also excessive. The Coalition spent 30.1 days to produce its approximately 200-page final argument. The document could have been improved if it had been shorter and provided a more concise summary of the Coalition’s argument. By way of comparison with other participants, the Coalition’s counsel claimed close to 1.5 times the number of hours as the next highest participant for this activity. Benga pointed out that this time included 1.8 hours after the Coalition’s final argument had already been submitted. Benga also suggested that the tasks undertaken by counsel in preparing their final argument did not justify the claim, but Benga did not make a convincing argument as to why the counsel’s efforts were inappropriate. Benga also claimed that the bulk of the writing of the final argument should be carried out by a junior lawyer or articling student. We agree with the Coalition that, for a proceeding as complex this one, it is reasonable for more experienced counsel to take a greater role in preparing a final argument.

[103] The hearing concluded on December 2, 2020, and we allowed participants other than Benga to submit written final arguments as late as January 8, 2021, in part to reflect the fact that the holiday season fell within that period. We find that 15 eight-hour days would be a reasonable amount of time for the Coalition to prepare its final argument. Given our concerns with the final argument as described above, we are therefore granting 15 days or 120 hours of the claim for legal fees for preparation of the Coalition’s final argument. If the Coalition’s legal team determined that it needed to spend more than this on legal fees for its final argument, then it is reasonable for the Coalition to bear the additional costs as part of its shared responsibility for the costs of participating in an AER hearing. We are therefore disallowing 120.5 hours of the Coalition’s claimed 240.5 hours for final argument. Because Mr. Secord and Ms. Okoye split the hearing topics between them, and both claimed a similar number of hours for final argument, we are splitting the total amount of hours between them, granting 60 hours for hearing attendance to each of Mr. Secord and Ms. Okoye. As explained above, we are disallowing all hours claimed by Ms. Bonnell.

[104] We noted some minor calculation errors in the claim submitted for Ms. Okoye, particularly with respect to GST, which does not appear to have been adjusted to reflect the reduction in hours claimed as a result of application of the federal Participant Funding Program. These errors did not have a material effect on our analysis or the amount awarded.

[105] Benga objected to some of the disbursements claimed by counsel for items such as photocopying and conference calls. However, we find these expenses to be reasonable and consistent with the spirit of allowable expenses in *Directive 031*, and we accept the claimed disbursements.

[106] To summarize, we are granting the following amounts from the claimed legal fees for the Coalition:

Table 1: Legal fees claimed by the Coalition and awarded by the panel

Section	Claimed	Awarded
Preparation	Secord: 106.8 hrs @ \$350 = \$37,380 Okoye: 157.96 hrs @ \$280 = \$44,228.80 Bonnell: 13.5 hrs @ \$200 = \$2,700 Subtotal: \$84,308.80	Secord: 106.8 hrs @ \$350 = \$37,380 Okoye: 157.96 hrs @ \$280 = \$44,228.80 Subtotal: \$81,608.80
Attendance	Secord: 226.7 hrs @ \$350 = \$79,345 Okoye: 247.2 hrs @ \$280 = \$69,216 Subtotal: \$148,561	Secord: 150.8 hrs @ \$350 = \$52,780 Okoye: 150.8 hrs @ \$280 = \$42,224 Subtotal: \$95,004
Argument	Secord: 128.5 hrs @ \$350 = \$44,975 Okoye: 109.3 hrs @ \$280 = \$30,604 Bonnell: 2.7 hrs @ \$200 = \$540 Subtotal: \$76,119	Secord: 60 hrs @ \$350 = \$21,000 Okoye: 60 hrs @ \$280 = \$16,800 Subtotal: \$37,800
Disbursements	\$1,288.20	\$1,288.20
GST	\$15,513.85	\$10,785.05
Federal Participant Funding Program reduction	-\$4,800	*deduction applied to final award
Total	\$325,965.60	\$226,486.05

Expert fees and disbursements

[107] The Coalition submitted a costs claim of \$238,513.87 for expert consultant fees, disbursements, and GST.

[108] The Coalition submitted that, based on its concerns about the proposed project, it sought out and retained expert consultants to provide evidence relating to the impacts of the proposed project. Expert consultants were sought out for their expertise in property devaluation, climate change, hydrogeology, geochemistry, environmental and biodiversity impacts, impacts on westslope cutthroat trout, noise, and the socioeconomic impacts of the proposed project.

[109] The Coalition submitted that these experts presented relevant and helpful evidence to the panel.

[110] The Coalition engaged eight expert witnesses. For each of these experts, we break down the claimed fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours claimed were reasonable, given how much the expert contributed to our understanding of the issues, and whether they directly and necessarily related to the proceeding. However, comparing an expert's claim to those of other experts in the proceeding can be useful, and where relevant we also provide this comparison.

[111] Because the Coalition represented a large number of stakeholders with a diverse range of interests, we found that engaging eight expert witnesses was reasonable, as they all contributed to our understanding of the issues. Some of these experts covered topics that were also addressed by other expert

witnesses, but generally we found that different experts explored different aspects of these issues, and there was minimal overlap between the information provided by different expert witnesses.

[112] As discussed in the section on the general approach taken by the panel, we reject Benga's proposed formula for determining the appropriate amount of preparation or hearing attendance time required by expert witnesses to participate in the hearing. For most of the Coalition's expert witnesses, Benga argued that their eligible hearing attendance time should be limited to a small window around the time they were actively presenting. We disagree with this argument. Experts should understand the other evidence being presented in their topic area, so they can be efficient in their presentations and help counsel and the panel understand the technical issues that arise in their areas of expertise.

[113] The Coalition and Benga exchanged detailed arguments about each expert engaged by the Coalition. Below, we address key questions related to individual experts.

Jon Fennell

[114] The Coalition submitted a costs claim of \$57,869.00 for professional fees and GST for Dr. Jon Fennell. The amount claimed reflects a reduction of \$2,800.00 due to the allocation of funding received from the federal Participant Funding Program, which we address in our conclusion for the Coalition claim. There appeared to be a minor calculation error in the GST claimed, but it was not material and we applied the correct GST calculation in our award.

Table 2: Professional fees claimed by the Coalition for Jon Fennell and awarded by the panel

Section	Claim	Awarded
Preparation	184 hrs @ \$270 = \$49,680	132.8 hrs @ \$270 = \$35,856
Attendance	12 hrs @ \$270 = \$3,240	12 hrs @ \$270 = \$3,240
Argument	18 hrs @ \$270 = \$4,860	8 hrs @ \$270 = \$2,160
GST	\$2,889	\$2,062.80
Federal Participant Funding Program reduction	-\$2,800	*deduction applied to final award
Total	\$57,869	\$43,318.80

[115] The Coalition submitted that Dr. Fennell provided relevant and helpful evidence to the panel as a result of his analysis of the hydrogeology, geochemistry, groundwater-surface water interaction, and climate change implications of the project on the lands owned and utilized by the Coalition's members.

[116] Benga submitted that Dr. Fennell's claimed 184 hours (23 eight-hour workdays) for preparation is not proportionate to his role at the hearing and is not proportionate to the limited extent that he responded meaningfully and helpfully to issues before the panel. Benga noted that the Coalition was approved for 2.7 hours of direct evidence in the water topic block, to be divided between the Coalition's four expert witnesses tendered by the Coalition for that topic. Assuming equal participation between the witnesses, Dr. Fennell would have been allocated approximately 0.7 hours for direct evidence. Benga noted that Dr. Fennell's report appended to the Coalition's September 21, 2020, submission to the panel was 24 pages in length.

[117] Benga further submitted that Dr. Fennell had charged fees for times that are not appropriately reimbursed by AER costs. The Coalition claimed fees for Dr. Fennell for preparation totalling 18 hours

between October 3, 2019, and October 24, 2019 (prior to the notice of hearing), on tasks including downloading “relevant documents” and accessing climate data.

[118] We found that Dr. Fennell’s evidence was useful to the panel in understanding the potential impacts of the project, and we find that he made a substantial contribution to the hearing. He dealt with complex subject matters that required extensive review of a large amount of technical material on the record and, as we have acknowledged elsewhere, Benga’s materials were not well organized.

[119] Dr. Fennell’s preparation time included 18 hours that the Coalition acknowledged took place before we issued the notice of hearing. As we discussed in the section on the general approach taken by the panel, the time claimed for work before a notice of hearing is issued is not eligible for a costs claim. We are therefore disallowing these 18 hours of preparation time.

[120] After removing these 18 hours of preparation time, Dr. Fennell claimed 166 hours (almost 21 eight-hour days) of preparation time. We agree that there was a large amount of highly complex material on the record for the topic areas that Dr. Fennell covered, and these areas were central to our eventual decision on the project. However, we find that the number of hours that Dr. Fennell claimed for preparation is slightly excessive. As a result, we are discounting these remaining 166 claimed hours by 20 per cent and granting 132.8 of the claimed 184 hours for preparation. If the Coalition determined that it needed its expert witness to spend additional time in preparation, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[121] Benga argued that the evidence provided by Dr. Fennell was duplicative of information and material covered by other expert witnesses for other participants. We do not agree. The subject matter covered by Dr. Fennell and these other witnesses was complex, and different experts examined different aspects of the technical issues necessary to understand the potential impacts of the project. We therefore grant the costs claimed for 12 hours of Dr. Fennell’s time to provide testimony, observe other relevant witnesses, and provide technical support to counsel on his complex topics during the hearing period.

[122] Dr. Fennell claimed 18 hours to support counsel during development of the Coalition’s final argument. We find this amount to be excessive. Despite the complexity of the subject matter, by the time of preparation of final argument, the Coalition counsel should have been able to compile its argument with at most one eight-hour day of support from an expert witness. If the Coalition determined that it needed its expert witness to spend additional time supporting the development of its final argument, then it is reasonable for the Coalition to bear this additional cost as part its shared responsibility for the costs of participating in an AER hearing. We are therefore granting 8 hours of time to Dr. Fennell for the final argument period.

Allan Locke

[123] The Coalition submitted a claim of \$42,460.00 for professional fees for Allan Locke. The amount claimed reflects a reduction of \$2,900.00 due to application of funds received from the federal Participant Funding Program, which we address in our conclusion for the Coalition claim. There appeared to be a minor calculation error in the GST claimed, but it was not material and we applied the correct GST calculation in our award.

Table 3: Professional fees claimed by the Coalition for Allan Locke and awarded by the panel

Section	Claim	Awarded
Preparation	82 hrs @ \$270 = \$22,140	33.5 hrs @ \$270 = \$9,045
Attendance	75.5 hrs @ \$270 = \$20,385	36 hrs @ \$270 = \$9,720
Argument	2.5 hrs @ \$270 = \$675	2.5 hrs @ \$270 = \$675
GST	\$2,160	\$972
Federal Participant Funding Program reduction	-\$2,900	*deduction applied to final award
Total	\$42,460	\$20,412

[124] Mr. Locke presented information related to fisheries and hydrology. The Coalition submitted that Mr. Locke provided relevant and helpful evidence to the panel because of his technical review of the scientific and technical data, assumptions, and methods used by the applicant in its flow assessment to evaluate the potential for flow-related effects on westslope cutthroat trout.

[125] Benga submitted that the 84 hours of preparation claimed for Mr. Locke was not justifiable given his minor role in the hearing. Benga noted that Mr. Locke prepared a 13-page expert report appended to the Coalition's September 21, 2020, submission that gave general recommendations for using Benga's existing flow and habitat data for further analysis of environmental flow with respect to Gold and Blairmore Creeks. Benga submitted that the Coalition was approved for 2.7 hours of direct evidence in the water topic block, which, assuming equal allocation between the Coalition's four witnesses, would mean Mr. Locke was approved for approximately 0.7 hours to give direct evidence.

[126] Benga submitted that the time claimed between January 8 and June 23, 2019, in the amount of 48.5 hours, all before we issued a notice of hearing, should not attract an award of costs.

[127] Benga submitted that the 75.5 hours claimed for Mr. Locke's attendance at the hearing was also not proportionate to Mr. Locke's minor role in the hearing and was not reasonable.

[128] We found Mr. Locke's evidence was useful to us in understanding the potential impacts of the project on fish and fish habitat — a highly technical topic that was key to our final decisions — and we find that he made a substantial contribution to the hearing.

[129] Mr. Locke's preparation time included 48.5 hours that took place before we issued the notice of hearing. As we discussed in the earlier section on the general approach taken by the panel, costs incurred prior to a notice of hearing being issued are not eligible for a cost order. We therefore disallow 48.5 hours of preparation time for Mr. Locke, which the Coalition acknowledged took place before the notice of hearing was issued. We find that the remaining 33.5 hours of claimed preparation time are reasonable, considering the large amount of technical material on the record for his topic area.

[130] Mr. Locke submitted a claim for 75.5 hours (more than nine eight-hour days) for the hearing period. Benga argued that this amount of time was not reasonable. The Coalition indicated that Mr. Locke provided technical expertise to counsel during the hearing and helped with understanding evidence and preparing cross-examination questions, among other contributions. We indicated in the section on the general approach taken by the panel that it is reasonable for expert witnesses to have a good understanding of what else is being said at the hearing on their areas of expertise, and for them to support counsel on items such as cross-examination questions. However, we find that the amount of time spent by

Mr. Locke was excessive and not reasonable. The water and fisheries topic block at the hearing ran into nine days, but at any given time the issues being discussed were relevant only to experts with certain areas of technical expertise and were not necessarily relevant to all experts. We find that, for experts in this topic block, the maximum amount of time that is eligible for costs is half the hearing time, or 4.5 of the 9 days (36 hours). If the Coalition determined that it needed its expert witness to participate for additional time at the hearing, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[131] For the hearing attendance portion, we are granting 36 hours of the 75.5 hours claimed by Mr. Locke.

[132] We accept Mr. Locke’s claim of 2.5 hours for assisting with the preparation of a final argument as being reasonable, and grant this 2.5 hours.

Clifford Wallis

[133] The Coalition submitted a claim of \$38,872.63 for professional fees and GST for Clifford Wallis (Cottonwood Consulting Ltd). The amount claimed reflected a reduction of \$3865.00 as a result of application of funding received from the federal Participant Funding Program, which we address in our conclusion for the Coalition claim. There appeared to be a minor calculation error in the GST claimed, but it was not material and we applied the correct GST calculation in our award.

Table 4: Legal fees claimed by the Coalition for Clifford Wallis and awarded by the panel

Section	Claim	Awarded
Preparation	83.5 hrs @ \$270 = \$22,545	77.75 hrs @ \$270 = \$20,992.50
Attendance	67.25 hrs @ \$270 = \$18,157.50	40 hrs @ \$270 = \$10,800
Argument		
GST	\$2,035.13	\$1,589.63
Federal Participant Funding Program reduction	-\$3,865	*deduction applied to final award
Total	\$38,872.63	\$33,382.13

[134] Mr. Wallis presented information related to vegetation and wildlife. The Coalition submitted that Mr. Wallis provided relevant and helpful evidence to the panel regarding terrestrial biodiversity issues within the project boundaries where environmentally significant areas support multiple species at risk, including the whitebark pine and little brown bat.

[135] Benga submitted that Mr. Wallis’ claimed time for preparation and attendance should be reduced to be proportionate to his role in the hearing and to remove time claimed for inappropriate tasks including:

- 5.75 hours for preparation time completed between December 29, 2018, and October 14, 2019, before issuance of the notice of hearing
- 19.5 hours relating to “cross” when he was not attending the hearing and presumably assisting legal counsel to develop cross-examination questions

- 12 hours where insufficient detail was provided, including time spent on a field visit and preparation for that field visit, and for entries claimed between October 25 and November 30, 2020, for “hearing preparation”

[136] Benga also submitted that Mr. Wallis’s claimed time should be further reduced as his evidence was not objective and was largely advocacy-oriented, and in that sense could only be of limited assistance to the panel. Benga noted that the AER has reduced costs awards in the past by 50 per cent for a witness whose evidence was found to be “less objective and somewhat advocacy oriented.”

[137] We found Mr. Wallis’s evidence helped the panel understand the potential impacts of the project on vegetation and species at risk, and we find that he made a substantial contribution to the hearing. This subject matter was an important factor in our decision, and there was a large volume of technical material on the record that benefitted from a review by someone with Mr. Wallis’ expertise.

[138] Mr. Wallis’ preparation time included 5.75 hours that took place before we issued the notice of hearing. As discussed in the section on the general approach taken by the panel, time claimed for work before a notice of hearing is issued is not eligible for a costs claim. We are therefore disallowing 5.75 hours of preparation time for Mr. Wallis that the Coalition acknowledged took place before we issued the notice of hearing. We are granting the remaining 77.75 hours of preparation time, because we find this to be a reasonable amount of time to review the material on this topic area and prepare evidence.

[139] Mr. Wallis submitted a claim for 67.25 hours, or more than eight eight-hour days, for the hearing period. Benga argued that this amount of time was not reasonable. The Coalition indicated that Mr. Wallis provided technical expertise to counsel during the hearing, helped with understanding evidence and preparing cross-examination questions, and so on. We indicated in the section on the general approach taken by the panel that it is reasonable for expert witnesses to have a good understanding of what else is being said at the hearing on their areas of expertise, and also for them to support counsel on items such as cross-examination questions. However, for Mr. Wallis, we find that the amount of time spent was excessive and not reasonable. The vegetation and wildlife topic blocks at the hearing ran into 10 days, but at any given time the issues being discussed were relevant only to experts with certain areas of technical expertise and were not necessarily relevant to all experts. We find that, for experts covering this topic block, the maximum amount of time that is eligible for costs is half the hearing time, or 5 of the 10 days (40 hours). If the Coalition determined that it needed its expert witness to participate in more of the hearing, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[140] For the hearing attendance portion, we are granting 40 of the 67.25 hours claimed by Mr. Wallis.

[141] Benga argued that Mr. Wallis was not an impartial expert witness because he is on the board of the AWA, and also that his travel claim for a site visit was unnecessary.

[142] We find that the important consideration was whether the expert provided useful information for us to better understand the project, and involvement with the participant organization does not detract from the expert’s usefulness or merit a reduction in costs. Although Mr. Wallis is on the board of the AWA, he provided credible expert testimony that helped us understand the vegetation and species-at-risk issues before the panel. Benga’s suggestion that other administrative tribunals have reduced costs claims by Mr. Wallis is irrelevant to our assessment.

[143] Mr. Wallis referenced his site visit during the hearing, and we also found this useful. In fact, to better understand the vegetation issues for the project, it is reasonable for an expert to undertake a site visit. We therefore reject Benga's suggestion that Mr. Wallis' other costs be reduced.

John Post

[144] The Coalition claimed \$33,940.00 in professional fees for Dr. John Post. The amount claimed reflects a reduction of \$1,700.00 as a result of application of funding received under the federal Participant Funding Program, which we address in our conclusion for the Coalition claim. As Dr. Post did not claim GST, we are not awarding any for this claim.

Table 5: Professional fees claimed by the Coalition for John Post and awarded by the panel

Section	Claim	Awarded
Preparation	52 hrs @ \$270 = \$14,040	52 hrs @ \$270 = \$14,040
Attendance	73 hrs @ \$270 = \$19,710	36 hrs @ \$270 = \$9,720
Argument	7 hrs @ \$270 = \$1,890	7 hrs @ \$270 = \$1,890
GST	\$0	\$0
Federal Participant Funding Program reduction	-\$1,700	*deduction applied to final award
Total	\$33,940	\$25,650

[145] Dr. Post presented information related to fisheries. The Coalition submitted that Dr. Post provided relevant and helpful evidence to the panel concerning his analysis of the impacts the proposed project will have on westslope cutthroat trout.

[146] Benga submitted that the time claimed for Dr. Post should be reduced to be proportionate to his minor role in the hearing, and to remove time claimed for inappropriate tasks. Benga noted that Dr. Post prepared a three-page expert report as part of the Coalition's September 21, 2020, submission, along with a PowerPoint presentation for direct evidence. Benga submitted that Dr. Post attended the hearing for at most two hours and this is the amount of time for which his time in attendance should attract an award of costs. Benga also submitted that the Coalition is not entitled to recover costs with respect to the seven hours Dr. Post claimed he spent preparing, reviewing, and editing the final legal argument.

[147] We found that Dr. Post's evidence helped the panel understand the potential impacts of the project on fisheries, which was a key topic informing our decision on the project, and we find that he made a substantial contribution to the hearing.

[148] Dr. Post submitted a claim for 73 hours for the hearing period, or more than nine eight-hour days. Benga argued that this amount of time was not reasonable. The Coalition indicated that Dr. Post provided technical expertise to counsel during the hearing, helped with understanding evidence and preparing cross-examination questions, and so on. In the section on the general approach taken by the panel we agreed it is reasonable for expert witnesses to have a good understanding of what else is being said at a hearing on their areas of expertise, and for them to support counsel on cross-examination questions. However, we find that the amount of time spent by Dr. Post was excessive and not reasonable. The water and fisheries topic block at the hearing ran into nine days, but at any given time the issues being discussed were relevant only to experts with certain areas of technical expertise, and were not necessarily relevant to all experts. We find that, for experts in this topic block, the maximum amount of time that is eligible for costs is half the hearing time, or 4.5 of the 9 days (36 hours). If the Coalition determined that it needed

its expert witness to participate in more of the hearing, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[149] For the hearing attendance portion, we are granting 36 hours of the 73 hours claimed by Dr. Post.

[150] We accept that his claims of 52 hours (6.5 eight-hour days) for preparation and seven hours for final argument are reasonable, considering the technical nature of the subject matter and the volume of material about this topic on the record.

Lorne Fitch

[151] The Coalition claimed \$25,620.00 in professional fees for Lorne Fitch. The amount claimed reflects a reduction of \$3,000.00 as a result of allocation of federal funding from the Participant Funding Program, which we address in our conclusion for the Coalition claim. As Mr. Fitch did not claim GST, we are not awarding any for this claim.

Table 6: Professional fees claimed by the Coalition for Lorne Fitch and awarded by the panel

Section	Claim	Awarded
Preparation	94 hrs @ \$270 = \$25,380	47 hrs @ \$270 = \$12,690
Attendance	10 hrs @ \$270 = \$2,700	10 hrs @ \$270 = \$2,700
Argument	2 hrs @ \$270 = \$540	2 hrs @ \$270 = \$540
GST	\$0	\$0
Federal Participant Funding Program reduction	-\$3,000	*deduction applied to final award
Total	\$25,620.00	\$15,930

[152] Mr. Fitch presented information related to fisheries. The Coalition submitted that Mr. Fitch provided relevant and helpful evidence to the panel with respect to the impact the proposed project would have had on the existing population of westslope cutthroat trout, present recovery efforts for the species, and the effectiveness of monitoring and mitigation efforts proposed by Benga to address the negative impacts of the proposed project on the species.

[153] Benga submitted that the time claimed for Mr. Fitch should be reduced to be proportionate to his role in the hearing, and time claimed for inappropriate tasks should be removed. Benga submitted that the costs Mr. Fitch claimed for 94 hours of preparation should be denied in full, based on the current level of detail provided in the Coalition's costs claim. Benga noted that Mr. Fitch's statement of account includes no dates for his claimed times entry. It is therefore impossible to determine whether some or all of this time was incurred before the panel issued a notice of hearing on June 29, 2020.

[154] Benga submitted that, as Mr. Fitch attended the hearing for under two hours, this is the amount of time for which his attendance should attract an award of costs.

[155] Benga noted that, after the closing of the record for the hearing, Mr. Fitch wrote an opinion piece for the media in which he clearly expressed that he does not have an open mind about proposals for coal development, regardless of where or how they are proposed in Alberta. Benga submitted that this is not the work of an objective and neutral expert, and an award of costs for Mr. Fitch's time should reflect that lack of objectivity.

[156] Responding to Benga’s submissions regarding Mr. Fitch’s objectivity, the Coalition submitted that Mr. Fitch’s independence was not impeached during the hearing. He was a long-time civil servant with the Alberta government with 50 years of experience, and he took an oath at the hearing to give evidence that was fair, objective and non-partisan. Any statements made by Mr. Fitch after the hearing do not detract from that oath.

[157] We found Mr. Fitch’s evidence helped the panel understand the potential impacts of the project on fisheries, and that he made a substantial contribution to the hearing on an issue that was of importance to our overall decision on the project.

[158] On the issue of preparation time, Mr. Fitch did not provide a clear accounting of when his 94 hours of preparation time took place. After Benga pointed this out, the Coalition had an opportunity to correct this oversight and submit an accounting of Mr. Fitch’s time that demonstrated when these hours took place. Given that the Coalition did not provide this information, we find that it is reasonable to reduce the hours awarded by 50 per cent, and we are granting 47 of the 94 hours of preparation time claimed for Mr. Fitch. We consider it reasonable to assume that at least this fraction of his preparation time would have occurred after the notice of hearing was issued.

[159] With respect to Benga’s concern that Mr. Fitch’s costs should be substantially reduced because he was not an impartial witness, we found Mr. Fitch’s evidence to be useful and relevant during the hearing process. We accept that he took his oath seriously while presenting his evidence. We do not agree that public statements made by Mr. Fitch outside the hearing process warrant a reduction in his allowable hours for the costs claim, and we accept that an expert can be objective in concluding that a project has a serious negative impact on an element of the environment. We are therefore granting his claimed time of 10 hours for hearing attendance and 2 hours for assisting with final argument, because we find both these amounts to be reasonable.

James Farquharson

[160] The Coalition submitted a claim for \$23,767.74 for professional fees, disbursements, and GST for James Farquharson (FDI Acoustics Inc.). The amount claimed reflects a reduction of \$1,100.00 due to application of funding from the federal Participant Funding Program, which we address in our conclusion for the Coalition claim. We identified a minor calculation error in the GST claimed and minor discrepancies in the forms submitted, but these were not material and we applied the correct GST calculation in our award.

Table 7: Professional fees and disbursements claimed by the Coalition for James Farquharson and awarded by the panel

Section	Claim	Awarded
Preparation	71 hrs @ \$230 = \$16,330	71 hrs @ \$230 = \$16,330
Travel time	5 hrs @ \$115 = \$575	5 hrs @ \$115 = \$575
Attendance	27 hrs @ \$230 = \$6,210	8 hrs @ \$230 = \$1,840
Argument	1 hr @ \$230 = \$230	1 hr @ \$230 = \$230
Disbursements	\$350.24	\$350.24
GST	\$1,184.76	\$966.26
Federal Participant Funding Program reduction	-\$1,100	*deduction applied to final award
Total	\$23,767.74	\$20,291.50

[161] Mr. Farquharson presented information related to noise. The Coalition submitted that Mr. Farquharson provided relevant and helpful evidence to the panel by analyzing the documents filed for this proceeding relating to the environmental noise impact of the proposed project.

[162] Benga submitted that the claim for Mr. Farquharson should be reduced to be proportionate to his awarded time in the hearing. Benga noted that Mr. Farquharson's contribution to the hearing was a four-page expert report and that he expressed in his report general agreement with the conclusions reached in Benga's noise impact assessment. Given the minimal role played by Mr. Farquharson in the hearing, and the limited extent to which he contributed to the panel's understanding of the issues, Benga submitted that his hours in preparation should be reduced by 50 per cent for the purposes of awarding costs. Benga further submitted that Mr. Farquharson's claim of one hour spent on the final argument was unnecessary.

[163] We found Mr. Farquharson's evidence was useful to the panel in understanding the potential impacts of the project.

[164] Mr. Farquharson claimed 71 hours of preparation for the hearing. We accept that this is a reasonable amount of time to review the material on the record and prepare his evidence, and we are granting these hours.

[165] Mr. Farquharson claimed 27 hours for attendance at the hearing, or almost 3.5 eight-hour days. We find that 27 hours to attend the hearing is excessive for the noise topic, which was not a point of major contention in the process, and little evidence from other expert witnesses needed to be reviewed during the hearing. We are therefore only granting eight hours (i.e., one day) out of his claimed 27 hours for hearing attendance. If the Coalition determined that it needed its expert witness to observe more of the hearing for a topic that was less controversial than other topics, then it is reasonable for the Coalition to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[166] We are granting his claim of one hour for assisting with the final argument, and his claim for disbursements and travel time, which Benga did not dispute and we find to be reasonable.

John Thompson

[167] The Coalition claimed \$11,165.00 for professional fees and GST for John Thompson (Watrecon Consulting). The amount claimed reflects a reduction of \$1,435.00 resulting from application of funding from the federal Participant Funding Program, which we address in our conclusion for the Coalition claim.

Table 8: Professional fees claimed by the Coalition for John Thompson and awarded by the panel

Section	Claim	Awarded
Preparation	40 hrs @ \$200 = \$8,000	20 hrs @ \$200 = \$4,000
Attendance	12 hrs @ \$200 = \$2,400	12 hrs @ \$200 = \$2,400
Argument	8 hrs @ \$200 = \$1,600	8 hrs @ \$200 = \$1,600
GST	\$600	\$400
Federal Participant Funding Program Reduction	-\$1,435	*deduction applied to final award
Total	\$11,165	\$8,400

[168] Mr. Thompson presented information related to economics. The Coalition submitted that Mr. Thompson provided relevant and helpful evidence to the panel on the economic impacts of the project, impacts of the project on population changes in the areas, and the resulting socioeconomic effects of the project.

[169] Benga submitted that Mr. Thompson's claimed time should be reduced. Benga submitted that the costs claimed in relation to Mr. Thompson's 40 hours for preparation should be denied in full, based on the level of detail provided in the Coalition's costs claim. Benga observed that Mr. Thompson's statement of account includes no dates for his claimed times and that it is therefore impossible to determine whether some or all of this time was incurred before the panel issued a notice of hearing. Benga submitted that Mr. Thompson should not be rewarded for preparing cross-examination questions and drafting the Coalition's written submission because those are legal counsel's tasks. Benga submitted that, to the extent Mr. Thompson provides any further details on his preparation time, these hours should be discounted to reflect the fact that Benga did not have the opportunity to scrutinize and comment on those detailed time entries. In the alternative, Benga stated that his time should be reduced by 50 per cent to reflect his limited role in the hearing, and the extent to which his evidence was duplicated by an LLG witness (Chris Joseph).

[170] In response to Benga's submissions on potential duplication of evidence between Mr. Thompson and Dr. Joseph, the Coalition submitted that a careful review of the evidence presented at the hearing would show that the evidence submitted by the two experts was complementary, with minimal overlap, and this was done deliberately so that there was no duplication of effort.

[171] We found Mr. Thompson's evidence was useful to the panel in understanding the potential economic impacts of the project.

[172] With respect to the 40 hours of preparation time claimed for Mr. Thompson, the Coalition had an opportunity to respond to Benga's concern and correct this oversight by submitting an accounting of Mr. Thompson's time that demonstrated when these hours took place. Given that the Coalition did not provide this information in its cost application or in its response to Benga's submission on its costs claim, we find it reasonable to grant only 50 per cent of the 40 claimed hours of preparation time for Mr. Thompson. We consider it reasonable to assume that at least this fraction of his preparation time would have occurred after the notice of hearing was issued, to review the material on the record and prepare his evidence. We therefore are granting 20 hours of preparation time for Mr. Thompson.

[173] With respect to Benga's argument that the evidence presented by Mr. Thompson was duplicative of that presented by LLG witness Dr. Joseph, we agree with the Coalition that the evidence of these two economists was complementary and did not involve significant overlap or duplication.

[174] We find the costs claimed for the rest of the time billed by Mr. Thompson (12 hours for hearing attendance, and 8 hours for final argument) are reasonable and grant those costs as claimed.

Brian Gettel

[175] The Coalition submitted a claim for \$4,819.50 in professional fees and GST for Brian Gettel (Gettel Appraisals Ltd.).

Table 9: Professional fees claimed by the Coalition for Brian Gettel and awarded by the panel

Section	Claim	Awarded
Preparation	16 hrs @ \$270 = \$4,320	16 hrs @ \$270 = \$4,320
Attendance	1 hr @ \$270 = \$270	1 hr @ \$270 = \$270
Argument		
GST	\$229.50	\$229.50
Total	\$4,819.50	\$4,819.50

[176] Mr. Gettel presented information related to property values and economics. The Coalition submitted that Mr. Gettel provided relevant and helpful evidence to the panel as a result of his assessment of the potential effect of the proposed project on real estate values adjacent to the project and within the Municipality of Crowsnest Pass.

[177] Benga submitted that the claim was reasonable and had already been reimbursed in full, according to the Coalition's allocation of \$4,819.50 from the Coalition advance costs award to Mr. Gettel.

[178] We found Mr. Gettel's evidence helped the panel understand the potential impacts of the project.

[179] As Benga did not contest the costs claim for Mr. Gettel, we are granting the costs as claimed. We address the impact of the Coalition advance costs award on the final costs award below.

Attendance honoraria

[180] The Coalition claimed a total of \$2,100.00 in participant honoraria for 11 individuals.

Table 10: Participant honoraria claimed by the Coalition and awarded by the panel

Participant	Honorarium claimed	Honorarium awarded
Fran Gilmar	\$100	\$100
Tyler Watmough	\$200	\$200
Norman Watmough	\$200	
Larry Donkersgoed	\$200	\$200
Ed Donkersgoed	\$200	
Kari Lehr	\$200	\$200
David Rothlin	\$200	
Rae Redekopp	\$200	\$200
John Redekopp	\$200	
Shirley Kirby	\$200	\$200
Vern Emard	\$200	\$200
Total	\$2,100	\$1,300

[181] Benga noted that several of the individuals for which honoraria were claimed are from the same household and gave similar evidence. Benga noted that *Directive 031* includes a general rule that AER can award attendance honoraria to no more than six individuals involved in a project review, and a departure from this rule requires the costs claimant to demonstrate "exceptional circumstances." Benga submitted that, in this instance, the Coalition has not demonstrated exceptional circumstances and has not shown that it was directly necessary that 11 non-expert witnesses attend the hearing. Benga submitted

that, in accordance with *Directive 031*, the attendance honoraria for the Coalition should be reduced to \$1,200.00 (six individuals claiming two half-days of attendance).

[182] While we appreciated hearing concerns directly from the individuals who live near the proposed project, we do not see any exceptional circumstances that warrant providing honoraria to more than one person per household. We agree with Benga that, with such a large number of individual participants from the Coalition, it is reasonable to only award one participation honorarium per household. We also find that, although *Directive 031* specifies that normally the AER would award participation honoraria to no more than six individuals, in this case the Coalition represented a large group of landowners near the project area, including some with property inside the proposed mine permit boundary, and it was therefore reasonable to hear from all these households. We are therefore granting the claims of one person in each of the six households for their two half-days of attendance, plus an honorarium for Fran Gilmar for her attendance of one half-day.

Conclusion

[183] The Coalition applied a total of \$21,600.00 to its various costs as awarded by the federal Participant Funding Program. We deduct this amount below.

[184] In summary:

- Coalition claim: \$566,579.47
- costs awarded: \$399,389.98
- minus advance costs award: -\$182,518.59
- minus federal funds allocated for claimed costs: -\$21,600.00
- balance: \$195,871.39

[185] After considering that we awarded the Coalition advance funds in the amount of **\$182,518.59**, the remaining approved costs claim owing to the Coalition is **\$195,871.39**.

Costs Claim of the Canadian Parks and Wilderness Society, Southern Alberta Chapter

[186] CPAWS submitted a costs claim of \$105,714.00, and later amended the claim to \$92,794.00 to account for funding received from the federal Participant Funding Program. As CPAWS did not specify the breakdown of fees and GST in the amended claim, we consider the revised claim to be as follows:

- legal fees \$39,200.00
- expert and analyst fees \$61,480.00
- GST \$5,034.00
- reduction for federal funding: -\$12,920.00

Cost factors and principles

[187] CPAWS submitted that it coordinated with other hearing participants to minimize overlap of issues covered by experts at the hearing and by counsel during cross-examination, and that it provided

useful and important evidence for the panel. It stated that its costs claim is considerably smaller than would be reasonable considering the overall complexity and length of the proceeding.

[188] CPAWS stated that experts Martin Olszynski and Cornelis Koliijn, as well as counsel Drew Yewchuk from the Public Interest Law Clinic, agreed to participate in the hearing for only what is awarded in this costs claim. Also, it stated that the claim for Mr. Yewchuk includes far fewer hours than were actually spent preparing for the hearing, and that the claim omitted work done with law student assistance or that served instructional purposes. It acknowledged that it had received some funding from the federal Participant Funding Program, which would be directed toward CPAWS' staff costs for participation in the proceeding.

[189] Benga submitted that we should not award CPAWS any costs because its participation falls within its mandate as an environmental charitable organization. Benga submitted that CPAWS is a well-resourced organization with active fundraising and has not demonstrated financial need or any extraordinary circumstances in support of the costs claim. Benga provided examples of CPAWS' finances to support this position.

[190] Benga also submitted that the CPAWS costs claim should be denied because CPAWS did not provide the necessary supporting details for its claimed legal and expert fees. Furthermore, Benga stated that costs for services provided by Mr. Yewchuk, Mr. Olszynski, and Mr. Koliijn should be denied because they voluntarily agreed to donate their time to CPAWS, which demonstrates that these costs were not directly and necessarily required for CPAWS' participation.

[191] In the alternative, Benga stated that the federal funding of \$13,865 that CPAWS received through the Participant Funding Program should be deducted from the costs claim. Benga stated that CPAWS directed this funding toward staff time used to prepare for the hearing, but AER costs awards do not compensate participants' staff for time spent in the ordinary course of their duties.

[192] Benga provided a calculation of potential costs that it suggested we might award, which totalled \$1,129.

[193] CPAWS submitted that there is no rule that groups dedicated to environmental protection are not entitled to costs. It stated that Benga provided no explanation for why such a rule should be created, and that such groups have recovered costs for other AER proceedings.

[194] CPAWS also submitted that Benga has misinterpreted previous AER cost decisions in arguing that a participant must show that it would have been financially unable to participate in the hearing without a costs award. CPAWS suggested that a participant does not need to be impecunious to recover costs. CPAWS acknowledged that it is an environmental nonprofit organization funded by charitable donations, but pointed out that whatever costs it bears from the hearing will lead to a decrease in funds available for other environmental protection initiatives.

[195] CPAWS criticized Benga's position that counsel and experts who participated only for what they would receive through the costs process are not eligible for costs. It stated that *Directive 031* explicitly contemplates that a lawyer may agree to participate for only the AER's cost award: "Some lawyers who appear before the AER accept the costs awarded to them by the AER as full payment for their services. Other lawyers require participants to pay them their full fees regardless of the fees awarded to them by the

AER.” CPAWS submitted that it would be an unfounded change of approach that contradicts *Directive 031* to disallow individuals who agree to appear at hearings on this basis from recovering costs.

[196] CPAWS suggested that the rule that “the AER does not award costs for services provided by a participant’s personnel in the normal course of their duties” applies where the personnel’s work is only indirectly connected to the hearing, and a person who serves as a witness at a public hearing is never acting within the “normal course of their duties,” as that work only occurs because of the hearing. However, CPAWS advised that it had revised its intended use of federal funding since its initial costs claim submission, and now it would direct those funds toward the experts Marc Bowles and Sarah Dougherty.

[197] In its reply submission, CPAWS submitted additional details to support its costs claim, particularly information surrounding the timeframe when work was done. It also addressed a number of general principles.

[198] We find that CPAWS’ participation in this proceeding was consistent with a number of the key factors and considerations we discussed in the section on the general approach taken by the panel.

[199] We accept that CPAWS attempted to be efficient in its participation in this proceeding. It demonstrated through the hearing that it coordinated with other participants to divide up key issues.

[200] CPAWS brought forward information and analysis about a range of different topic areas related to potential impacts of the project. The information and analysis it submitted to the panel was useful in making our decision.

[201] We note that CPAWS spent time and resources on this proceeding that are not eligible for costs awards, including time it incurred before we issued the notice of hearing. CPAWS also generally attempted to be efficient and coordinate with other participants.

[202] We agree with CPAWS’ position that there is no reasonable basis to deny a participant from claiming costs simply because the participant is an environmental nongovernmental organization.

[203] We considered CPAWS’ ability to fundraise. The fact that CPAWS had the ability to fundraise to offset some of its costs was relevant to its ability to pay, and is consistent with the principle that all participants have some shared responsibility to participate. However, we did not find Benga’s selected information about CPAWS’ financial position to be compelling, because our role is not to audit the financial statements of any participant. As we discussed in the section on the general approach taken by the panel, we recognize that the claimed costs were only a subset of the costs that CPAWS incurred throughout this proceeding. It is reasonable for a participant to raise funds that can help offset these ineligible costs.

[204] We considered the federal participant funding program funds that were awarded to CPAWS, which it applied toward the costs for some of its expert witnesses.

[205] We discuss other guiding principles that informed our decision in each of the following sections.

Legal fees

[206] CPAWS submitted a claim of \$41,160.00 for legal fees and GST for Mr. Yewchuk of the Public Interest Law Clinic.

[207] Benga submitted that costs for Mr. Yewchuk’s work should be denied in full because CPAWS’ participation in the hearing falls within its mandate, costs are unnecessary because Mr. Yewchuk agreed to donate this time to CPAWS, and CPAWS failed to provide the necessary documentation to support the fees claimed.

[208] In the alternative, Benga submitted that the costs claim should be reduced to be proportionate to CPAWS’ and Mr. Yewchuk’s roles in the hearing. Benga applied the formula it devised to evaluate whether an amount of time claimed was reasonable, based on the amount of time we awarded a participant at the hearing.

[209] Benga added that, if Mr. Yewchuk provided any further details to support time spent in preparation, hearing attendance, and argument in CPAWS’ reply submission, this time must be discounted to reflect the fact that Benga did not have the opportunity to scrutinize and comment on these incurred costs.

[210] In response, CPAWS emphasized that its costs claim clearly includes fewer hours than the time it actually spent on the proceeding, and that Benga’s proposed approach is not consistent with an efficient approach to the conduct of hearings, or with previous cost awards for counsel at joint review panel hearings.

[211] We break down CPAWS’ claim for legal fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours were reasonable and necessary to support CPAWS’ contribution in this proceeding:

- preparation: 5 hours (0.6 days)
- attendance: 170 hours (21.3 days)
- argument: 21 hours (2.6 days)

[212] CPAWS indicated that Mr. Yewchuk only submitted a portion of the time he actually spent in this proceeding, as part of the costs claim. As the Public Interest Law Clinic is a teaching clinic, work done by law student assistance or that served instructional purposes was not claimed. Given the relatively low number of claimed hours for preparation and final argument, and the fact that his claim for hearing attendance was about 21 days for the 29-day hearing, we find that Mr. Yewchuk’s claimed hours are reasonable. In the earlier section on the general approach taken by the panel, we explained that we do not accept Benga’s proposed formula to evaluate whether preparation time was reasonable and proportionate to a participant’s role in the hearing. We find that Mr. Yewchuk was an active participant throughout the hearing, and his work helped the panel better understand the potential impacts of the project. As discussed earlier in this decision, the hours claimed for hearing attendance include both time spent at the hearing and preparation time during the time period that the public hearing took place.

[213] One of the factors we can consider under section 58.1 of the *Rules of Practice* is 58.1(i), which is “whether the participant required financial resources to make an adequate submission.” There are two aspects to this question in this situation: first, whether the other financial resources available to CPAWS or the Public Interest Law Clinic mean that this participant did not require the claimed costs to make an adequate submission; and second, whether the willingness of Mr. Yewchuk, the Public Interest Law

Clinic, or several of the CPAWS expert witnesses to volunteer their time, if necessary, means that this participant did not require the claimed costs to make an adequate submission. We addressed the first point in the section on the general approach taken by the panel, where we found that, in general, the ability of a participant to fundraise or make use of other funding sources does not disqualify the participant from receiving costs in the AER costs claim process. We agree with CPAWS that a participant does not need to be otherwise financially unable to participate in order to receive a costs award.

[214] The second point concerns the willingness of counsel or experts to volunteer time to the participant, if necessary. The CPAWS cost submission explained that these individuals did not say that they did not need to be paid for their time, but rather that Mr. Olszynski, Mr. Kolijn, and the Public Interest Law Clinic agreed to participate in the hearing for only what is awarded by the panel in this costs claim process. We find that this willingness to volunteer speaks more to the motivations of counsel and the experts than to the “requirement of financial resources” specified in section 58.1(i) of the *Rules*. Counsel and the expert witnesses required time to prepare and participate in this proceeding, and by spending this time they helped us understand the potential impacts from the project.

[215] We therefore find that the fact that counsel and some expert witnesses were willing to potentially volunteer their time to CPAWS does not make them ineligible to be awarded costs.

[216] Benga argued that, because CPAWS submitted its detailed account of legal fees late, Benga did not have an opportunity to thoroughly review these details. We reviewed the account submitted by CPAWS in its reply submission and, considering that CPAWS’ counsel, Mr. Yewchuk, participated extensively in the hearing, we find that his claimed hours were reasonable and necessarily related to the hearing. We are therefore granting all the claimed hours for legal fees by CPAWS.

[217] To summarize, we are granting the following amounts from the claimed legal fees for CPAWS.

Table 11: Legal fees claimed by the Canadian Parks and Wilderness Society and awarded by the panel

Section	Claimed	Granted
Preparation	5 hrs @ \$200 = \$1,000	5 hrs @ \$200 = \$1,000
Attendance	170 hrs @ \$200 = \$34,000	170 hrs @ \$200 = \$34,000
Argument	21 hrs @ \$200 = \$4,200	21 hrs @ \$200 = \$4,200
GST	\$1,960	\$1,960
Total	\$41,160	\$41,160

Expert witnesses

[218] CPAWS engaged four expert witnesses. For each of these experts, we break down the claimed fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list both total hours, and in some cases, we present the numbers as eight-hour days for ease of comparison. In assessing the claims, we primarily considered whether the hours claimed were reasonable given how much the expert contributed to our understanding of the issues, and whether they were directly and necessarily related to the proceeding. However, because comparing an expert’s claim to those of other experts in the proceeding can be useful, where relevant we also provide this comparison.

[219] CPAWS coordinated with other participants to focus their expert witnesses on certain topics, and thus we accept that engaging four expert witnesses was reasonable. We found that all these experts

contributed to our understanding of the issues before us. Some of these experts covered topics that had some overlap with evidence provided by other expert witnesses, but we found the overlaps to be minor.

[220] As discussed in the section on the general approach taken by the panel, we reject Benga’s proposed formula for determining the appropriate amount of preparation or hearing attendance time required by expert witnesses to participate in the hearing. For some of CPAWS’ expert witnesses, Benga argued that their eligible hearing attendance time should be limited to a small window around the time they were actively presenting. We disagree with this argument because an understanding of the other evidence being presented in their topic area can help a witness make an efficient presentation and help counsel and the panel understanding the technical issues that arise in their areas of expertise.

[221] CPAWS and Benga exchanged detailed arguments about each expert engaged by CPAWS. We address some of these arguments in this general section on CPAWS’ expert witnesses, and below we address additional questions related to individual experts.

Marc Bowles and Sarah Dougherty (Wyndham Environmental)

[222] CPAWS initially submitted a claim of \$14,994.00 for professional fees and GST for experts Marc Bowles and Sarah Dougherty. In its response to Benga’s submissions on its costs claim, CPAWS subsequently allocated \$12,920.00 of federal funding toward these experts, reducing the amount claimed in its AER costs claim to \$2,074.00.

Table 12: Professional fees claimed by CPAWS for Marc Bowles and Sarah Dougherty and awarded by the panel

Section	Claim	Awarded
Preparation	Bowles: 40.25 hrs @ \$225 = \$9,056.25 Dougherty: 25.75 hrs @ \$195 = \$5,021.25 Subtotal: \$14,077.50	Bowles: 40.25 hrs @ \$225 = \$9,056.25 Dougherty: 25.75 hrs @ \$195 = \$5,021.25 Subtotal: \$14,077.50
Attendance	0.75 hrs @ \$270 = \$202.50	0.75 hrs @ \$270 = \$202.50
Argument		
GST	\$714	\$714
Federal Participant Funding Program Reduction	-\$12,920	-\$12,920
Total	\$2,074	\$2,074

[223] Mr. Bowles, supported by Ms. Dougherty, presented information related to hydrogeology and groundwater. While Ms. Dougherty did not appear at the hearing, we accept that her assistance reduced the costs claimed by Mr. Bowles due to his higher rate. We found Mr. Bowles’ evidence was useful to the panel in understanding the potential impacts of the project.

[224] Benga argued that these costs should be denied in full or, in the alternative, discounted by 50 per cent because CPAWS has not met the *Directive 031* requirement to provide a copy of the account with sufficient detail to demonstrate that all items billed were necessary and related to the proceeding, and because the evidence duplicated that of other experts.

[225] We found the total preparation time of 66 hours (about 8 days) was reasonable to review the materials on the record for this topic and prepare a submission, and CPAWS only submitted costs for the

time spent giving evidence and being cross-examined before the panel. Although the details of the costs claim were submitted late and Benga did not have a chance to review the detailed breakdown, we reviewed the account submitted by CPAWS in its reply submission and, considering the level of participation of Mr. Bowles, we find that the claimed hours were reasonable and directly and necessarily related to the proceeding.

[226] Mr. Bowles' evidence relating to the challenges of mapping fractures was particularly helpful, and we found that there was no significant duplication with the evidence of other expert witnesses.

[227] We accept CPAWS decision to allocate \$12,920.00 of federal funding toward the fees of these witnesses and have not made any further deductions to the allowable costs based on items covered by the federal Participant Funding Program. We are granting the costs claim of \$2,074.00 for the two witnesses.

Martin Olszynski

[228] CPAWS submitted a claim for \$1,932.00 in professional fees and GST for expert Martin Olszynski.

Table 13: Professional fees claimed by CPAWS for Martin Olszynski and awarded by the panel

Section	Claim	Awarded
Preparation	7 hrs @ \$230 = \$1,610	7 hrs @ \$230 = \$1,610
Attendance	1 hrs @ \$230 = \$230	1 hrs @ \$230 = \$230
Argument		
GST	\$92	\$92
Total	\$1,932	\$1,932

[229] Mr. Olszynski presented information related to adaptive management. We found his evidence to be of use to the panel in understanding the potential impacts of the project, and we find that he made a substantial contribution to the hearing.

[230] Benga argued that these costs should be denied in full because CPAWS did not provide a copy of the account with sufficient detail to demonstrate that all items billed were necessary and related to the proceeding, CPAWS' participation in the hearing falls within its mandate, costs are unnecessary because Mr. Olszynski agreed to donate this time to CPAWS, and the information provided by this expert was not relevant to the panel's mandate. Benga also argued that Mr. Olszynski's evidence should have been presented earlier in the review process, not at the hearing.

[231] CPAWS responded that Mr. Olszynski's evidence was relevant as it related to the inadequacy of the material Benga submitted in its EIA and could not have been submitted as comments on the terms of reference.

[232] We have addressed Benga's arguments about CPAWS' mandate and Mr. Olszynski agreeing to work for only the costs awarded through the costs claim process. We disagree with Benga that Mr. Olszynski's evidence was not relevant to the panel's mandate. We found his evidence helped inform our approach to considering how Benga's commitments to adaptive management for future environmental effects should be evaluated.

[233] We found that Mr. Olszynski submitted a relatively modest costs claim, compared with most other expert witnesses, and that time claimed by Mr. Olszynski was reasonable. We therefore grant the costs claimed for Mr. Olszynski's involvement in the proceeding.

Cornelius Kolijn

[234] CPAWS submitted a claim for \$47,628.00 in professional fees and GST for Cornelis Kolijn.

Table 14: Professional fees claimed by CPAWS for Cornelius Kolijn and awarded by the panel

Section	Claim	Awarded
Preparation	160 hrs @ \$270 = \$43,200	106.7 hrs @ \$270 = \$28,809
Attendance	8 hrs @ \$270 = \$2,160	8 hrs @ \$270 = \$2,160
Argument		
GST	\$2,268	\$1,548.45
Total	\$47,628	\$32,517.45

[235] Mr. Kolijn presented information related to the economic considerations of the project, specifically coal quality and coal markets. His evidence helped the panel understand the potential impacts of the project, and we find that he made a substantial contribution to the hearing.

[236] Benga submitted that costs for Mr. Kolijn's work should be denied in full because CPAWS' participation in the hearing falls within its mandate, costs are unnecessary because Mr. Kolijn has agreed to donate his time, CPAWS has failed to provide the necessary documentation to support the claim, and the claim is disproportionate to the importance of this topic area in the hearing.

[237] We have addressed Benga's arguments related to CPAWS' mandate and Mr. Kolijn agreeing to work for only the costs awarded. On the late submission of the account details, we reviewed the account submitted by CPAWS in its reply submission.

[238] Mr. Kolijn claimed 160 hours (20 eight-hour days) of preparation time. While there was a large amount of complex material on the record for the topic area that Mr. Kolijn covered, the material was not as complex and central to our eventual decision on the project as the water and fisheries topics. We therefore find that the number of hours that Mr. Kolijn claimed for preparation is excessive and not proportional to the relevance of the topic in our decision. We are discounting these remaining 160 claimed hours by one-third, granting 106.7 hours for preparation.

[239] One day of attendance at the hearing was a reasonable level of engagement for this topic area, and we are granting his claim of 8 hours for hearing attendance.

Conclusion

[240] In summary:

- CPAWS original claim: \$105,714.00
- CPAWS adjusted claim: \$92,794.00
- costs awarded: \$77,683.45

[241] The approved costs claim owing to CPAWS is **\$77,683.45**.

Costs Claim of the Livingstone Landowners Group

[242] The Livingstone Landowners Group submitted a costs claim of \$377,833.92 (including GST), broken down as follows:

- legal fees \$237,944.00
- expert and analyst fees \$117,545.00
- disbursements and expenses \$3,000.16
- participation honoraria \$800.00
- GST \$18,544.77

Cost factors and principles

[243] The LLG submits that it was reasonable to incur legal and expert costs to assist it with its participation in the proceeding. The hearing was lengthy and involved voluminous and technically challenging documentation. The public hearing was close to six weeks long and divided into six topic sessions, and the LLG submitted evidence or conducted cross-examination in every topic session except one.

[244] Benga submitted that the costs claimed were not incurred for work that was directly and necessarily required for the LLG to participate and were not proportionate to the LLG's or its individual experts' participation in the hearing. Furthermore, Benga submitted that the LLG failed to provide a compelling reason why it should not bear its own costs, given that the LLG has both fundraised for its participation in the hearing, and used its participation to fundraise its campaign to prohibit any coal development in Alberta.

[245] Benga also submitted that the LLG provided no explanation for why it did not make an adequate attempt to access funds available through the federal Participant Funding Program. The Agency allocated approximately \$746,000 under this program, and one of the express purposes of the funding was to help recipients prepare for and participate in the public hearing.

[246] Benga suggested that we should deny the LLG costs claim in its entirety, except for some participant honoraria and disbursements. In the alternative, Benga proposed a calculation that yielded a potentially reasonable final award of costs for the LLG of \$149,457.76.

[247] The LLG replied to Benga's submission by highlighting that it was the disorganized state of Benga's materials that led to the need for participants to spend as much time as they did reviewing the materials. The LLG also responded that it is not in the business of persistent opposition to development and, in any case, opposition to a project does not disqualify a participant from receiving costs. The LLG identified how its participation satisfied the factors we must consider in the costs claim process, and it argued that Benga's proposed formula to determine reasonable amounts of time (based on the time awarded to present evidence at the hearing) was inappropriate.

[248] We find that the LLG's participation in this proceeding was consistent with a number of the key factors and considerations we discussed in the section on the general approach taken by the panel.

[249] We accept that the LLG attempted to be efficient in its participation in this proceeding. It demonstrated through the hearing that it coordinated with other participants to divide up key issues.

[250] The LLG brought forward information and analysis about a range of different topic areas related to potential impacts of the project. The information and analysis it submitted to the panel was useful to us in making our decision.

[251] The LLG spent time on this process that is not included in this costs claim, including time before we issued the notice of hearing. The LLG also generally attempted to be efficient and coordinate with other participants.

[252] Benga argued that the LLG should have its costs reduced because the activities undertaken by the LLG were not directly and necessarily required for the hearing, and it based the formula it developed to evaluate a reasonable level of participation on the time we allocated to participants at the hearing. In the earlier section on the general approach taken by the panel, we explained that we do not accept Benga's proposed formula to evaluate whether preparation time was reasonable and proportionate to a participant's role in the hearing.

[253] Benga also objected that the LLG did not need the costs award to participate in the hearing, due to their other resources and their ability to fundraise. We discussed this argument earlier. We agree that bearing the costs of participation in a hearing is a shared responsibility between proponents and other participants, but the LLG incurred more costs than just those submitted as part of this costs claim — for example, all its activities prior to the issuance of the notice of hearing. As we discussed previously, a participant does not need to demonstrate that it is financially unable to participate without being awarded costs in the AER costs claim process.

[254] We agree with Benga that the LLG should have sought costs from the federal Participant Funding Program. We do not know why the LLG did not pursue this avenue of funding, or how much it would have been awarded if it had applied. We note that the LLG had an opportunity to respond to Benga's contention that the LLG should have applied for federal participant funding in its reply submission but did not do so. We are left to conclude that the LLG did not make an adequate attempt to use other funding sources. As a comparison, the Coalition, which played a role similar to that of the LLG in terms of actively participating and providing expert witnesses and cross-examination across almost all topic areas, allocated \$21,600.00 from the federal program toward its AER costs claim. We consider this to be an indicator of the approximate amount of other funding that the LLG did not make an adequate attempt to use, and we are deducting \$21,600.00 from the costs award to the LLG.

[255] We discuss other important principles that informed our decision in the following sections.

Legal fees

[256] The LLG submitted a costs claim for \$250,594.42 for McLennan Ross LLP for legal fees, disbursements, and GST. There were some minor discrepancies between the amounts in the forms submitted, but they were not material and did not affect our costs award.

[257] Benga submitted that the amount of time claimed for legal fees was not reasonable, based on the formula it proposed to determine a reasonable number of hours based on the amount of time we awarded to participants to present evidence at the hearing.

[258] For the preparation period before the hearing, Benga objected to the 14.8 hours of Gavin Fitch's time that was billed before we issued the notice of hearing. Benga also suggested that the two counsel for the LLG duplicated efforts in a number of instances. Benga then suggested that the remaining hours billed for preparation should be discounted by 50 per cent to reflect the LLG's role in the hearing and its fundraising activities.

[259] For hearing attendance, Benga submitted that the two counsel from the LLG claimed an equivalent of 65.4 eight-hour workdays for the 29-day hearing, that this amount is unreasonable and reflects some duplication, and that the LLG's counsel were not acting efficiently. Benga suggested that this claim should be discounted by 50 per cent.

[260] For preparation of the final argument, Benga submitted that this responsibility should have fallen mostly to a junior counsel, and that Mr. Fitch's claimed time was unreasonable. Benga proposed that the time for both counsel for this period be discounted by 50 per cent. Benga also objected to a photocopying disbursement of \$513.85.

[261] In response, the LLG submitted that the hours claimed in advance of the notice of hearing were modest and that Benga's proposals to reduce the number of hours that should be compensated by 50 per cent, using Benga's formula to assess hours, was inappropriate. The LLG further submitted that both counsel had a large workload during the hearing and that the claim for the preparation period was relatively modest compared with other participants. The LLG also submitted that its claim for preparing the final argument was reasonable considering the document was about 150 pages in length.

[262] We break down the LLG's claim for legal fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours were reasonable to support the LLG's contribution. However, comparing a participant's claim with those of other participants can be useful, and where relevant we also provide this comparison:

- Preparation: 111.2 hours (13.9 days).
- Attendance: 523.3 hours (65.4 days). Among the various costs claims that we reviewed, this was one of two claims for legal fees for hearing attendance that were considerably higher than all other claims for this period.
- Argument: 167.3 hours (20.9 days). Among the various costs claims that we reviewed, this was one of two claims for legal fees for the final argument that were considerably higher than all other claims for this period.

[263] We note that the LLG made use of a senior counsel, Mr. Fitch, and a more junior counsel in a support role, Cesar Agudelo. Given that the LLG prepared a significant amount of evidence and participated in almost every session of the hearing, and that the hearing was complex, we agree that it was reasonable for the LLG to utilize two counsel for the process, and note that the LLG used a senior and junior counsel, as contemplated by *Directive 031*.

[264] As we discussed in the section on the general approach taken by the panel, the time claimed for work before a notice of hearing is issued is not eligible for a costs claim. We are therefore disallowing

14.8 hours of preparation time for Mr. Fitch, which the LLG acknowledged took place before the notice was issued.

[265] As we discussed in the section on the general approach taken by the panel, we do not accept Benga's proposed formula to determine whether preparation hours are reasonable, based on the time that we allocated to a participant for presentation of evidence at the hearing.

[266] Benga pointed to several examples of preparation time that it argued represented duplication between the two counsel for the LLG. We find that a small amount of overlap between counsel is reasonable and necessary to coordinate efforts and ensure efficiency. In a complex proceeding such as this, it is not possible to eliminate all overlap. There was a large amount of material to review and prepare for, considering the broad range of issues for which the LLG prepared evidence. With the exception noted above for hours claimed before the notice was issued, we find the LLG claim for legal fees during the preparation period before the hearing was reasonable and award the balance of those hours.

[267] For the time period during which the public hearing took place (October 27 to December 2, 2020), the LLG did not always clearly distinguish between hours spent at the hearing and hours spent in preparation (for example, preparing witnesses to give evidence or developing questions for cross-examination). In the discussion that follows for this time period, we consider all hours as hearing attendance hours, recognizing these hours include time spent participating at the hearing and preparing outside the hearing. Furthermore, because we recognize that some hearing days were longer or shorter than others, when we describe a hearing day we are treating it as eight hours in length, on average.

[268] We find that 65.4 eight-hour days of time for attendance at the hearing is excessive, given that the hearing itself involved 29 days of sitting time. We understand that counsel required preparation outside of the actual time the hearing is in session, but the LLG claim for this time period effectively represents more than an extra full day of preparation after attending a full day of the hearing.

[269] We find that, for a participant such as the LLG that is heavily engaged across a broad range of the topics, a reasonable amount of legal time for daily preparation during the hearing would amount to an extra 30 per cent of a day for each actual hearing day. This assumes counsel spends an average of 2.4 hours in the evening to prepare for upcoming hearing days, after spending a full 8 hours at the hearing. On some days this may have been more (such as when the LLG had an expert scheduled to appear the following day), and on other days it may have been less. Our approach is independent of whether the participant uses just one counsel or divides the issues and concerns between two counsel. We are granting a maximum of $29 \times 1.3 = 37.7$ days or 301.6 hours for legal fees for the hearing period. If the LLG legal team determined that it needed to spend more time than this in legal fees for hearing participation — for instance, by spending more than an average 2.4 hours in the evening preparing for upcoming hearing days — then it is reasonable for the LLG to bear this additional cost, as part of its shared responsibility for the costs of participating in an AER hearing. We are therefore disallowing 221.7 hours of the LLG's claimed 523.3 hours for hearing attendance, with this deduction applied to the less senior lawyer (Mr. Agudelo).

[270] On the claim for final argument, Benga repeated that the more junior lawyer should have been largely responsible for producing the final argument, and the senior counsel's time should be significantly discounted. We are not convinced that the production of a final argument should primarily fall to a junior

counsel. However, in this case, the senior counsel, Mr. Fitch, claimed substantially fewer hours than the junior counsel, Mr. Agudelo, for preparing the final argument.

[271] We note that, although the hearing concluded on December 2, 2020, we allowed participants other than Benga to submit final arguments on January 8, 2021, in part to reflect the fact that the holiday season fell within that time period. The LLG claimed 20.9 days to produce its approximately 150-page final argument. We find that the 150-page document could have been improved if it had been shorter and provided a more concise summary of the LLG's argument. In light of this, we find that 15 days would have been a reasonable amount of time for the LLG to prepare its final argument, and we therefore grant 15 days or 120 hours of the claim for legal fees for preparation of the LLG's final argument. If the LLG legal team determined that it needed to spend more time than this in legal fees for the final argument, then it is reasonable for the LLG to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing. We are therefore disallowing 47.3 hours of the LLG's claimed 167.3 hours for the final argument, with this deduction applied to the junior lawyer, Mr. Agudelo.

[272] Benga objected to the minor amounts of disbursements claimed by counsel for items such as photocopying and conference calls. However, we find these expenses to be reasonable and consistent with the spirit of allowable expenses in *Directive 031*, and we accept the claimed disbursements of \$717.35.

[273] To summarize, we are granting the following amounts from the claimed legal fees for the LLG.

Table 15: Legal fees claimed by the Livingstone Landowners Group and awarded by the panel

Section	Claimed	Awarded
Preparation	Fitch: 78.7 hrs @ \$350 = \$27,545 Agudelo: 11.1 hrs @ \$240 = \$2,664 Agudelo: 21.4 hrs @ \$140 = \$2,996 Subtotal: \$33,205	Fitch: 63.9 hrs @ \$350 = \$22,365 Agudelo: 11.1 hrs @ \$240 = \$2,664 Agudelo: 21.4 hrs @ \$140 = \$2,996 Subtotal: \$28,025
Attendance	Fitch: 298 hrs @ \$350 = \$104,300 Agudelo: 225.3 hrs @ \$240 = \$54,072 Subtotal: \$158,372	Fitch: 298 hrs @ \$350 = \$104,300 Agudelo: 3.6 hrs @ \$240 = \$864 Subtotal: \$105,164
Argument	Fitch: 56.5 hrs @ \$350 = \$19,775 Agudelo: 110.8 hrs @ \$240 = \$26,592 Subtotal: \$46,367	Fitch: 56.5 hrs @ \$350 = \$19,775 Agudelo: 63.5 hrs @ \$240 = \$15,240 Subtotal: \$35,015
Disbursements	\$717.35	\$717.35
GST	\$11,933.07	\$8,446.07
Total	\$250,594.42	\$177,367.42

Expert witnesses

[274] The LLG engaged four expert witnesses. For each expert, we break down the claimed fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours were reasonable to support the expert's contribution to our understanding of the issues, directly and necessarily related to the proceeding, and how much the expert contributed to our understanding of the issues. However, because comparing an expert's claim to those of other experts in the proceeding can be useful, where relevant we also provide this comparison.

[275] The LLG participated actively in the proceeding across a range of topic areas, and we accept that engaging four expert witnesses was reasonable. We found that these experts contributed to our understanding of the issues before the panel. Some of these experts did cover topics that had some overlap with evidence provided by other expert witnesses, but we found the overlaps to be minor.

[276] As we discussed in the section on the general approach taken by the panel, we reject Benga's proposed formula for determining the appropriate amount of preparation or hearing attendance time required by expert witnesses to participate in the hearing. Benga argued that most of the LLG's expert witnesses' eligible hearing attendance time should be limited to a small window around the time they were actively presenting. We disagree with this argument because understanding the other evidence being presented in a topic area can help a witness make their presentations efficient and help counsel and the panel understand the technical issues that arise in their areas of expertise.

[277] The LLG and Benga exchanged detailed arguments about each expert engaged by the LLG. Below, we address key issues related to individual experts.

Gord McKenna

[278] The LLG submitted a costs claim of \$57,415.70 for professional fees, disbursements, and GST for Dr. Gord McKenna (McKenna Geotechnical Inc.). There were some discrepancies in the totals between the different forms submitted, as well as a minor calculation error in the GST claim, but these were not material and we applied the correct GST calculation in our award.

Table 16: Professional fees and disbursements claimed by the LLG for Gord McKenna and awarded by the panel

Section	Claim	Awarded
Preparation	187.5 hrs @ \$250 = \$46,875	136.4 hrs @ \$250 = \$34,100
Travel time	8 hrs @ \$125 = \$1,000	8 hrs @ \$125 = \$1,000
Attendance	10.5 hrs @ \$250 = \$2,625	10.5 hrs @ \$250 = \$2,625
Argument	11.5 hrs @ \$250 = \$2,875	11.5 hrs @ \$250 = \$2,875
Disbursements	\$1,371.95	\$1,371.95
GST	\$2,733.32	\$2,098.60
Total	\$57,415.70	\$44,070.55

[279] Dr. McKenna contributed to two separate topics in the proceeding: water and reclamation. His evidence helped the panel understand the potential impacts of the project, and we find that he made a substantial contribution to the hearing.

[280] Benga argued that Dr. McKenna's time spent preparing presentations of his evidence (72 hours) should be discounted. Benga further argued that Dr. McKenna's remaining preparation time should be reduced by 50 per cent to reflect his role in the hearing, and the fact that some of his evidence duplicated that of other experts.

[281] We do not agree that Dr. McKenna's evidence duplicated that of other experts. However, while we agree that preparation of materials to summarize evidence for the hearing is useful to help a panel understand the expert's evidence, we find that the amount of time claimed for this activity was excessive and we are discounting these 72 hours by 50 per cent.

[282] Dr. McKenna claimed 187.5 hours (23.4 eight-hour days) of preparation time, of which we have already discounted 36 hours as described above. Of the remaining hours claimed for preparation, we recognize that there was a large amount of technical material to review for these topic areas, which were central to our decision on the project, but we find that the amount of hours that Dr. McKenna claimed for preparation is slightly excessive. As a result, we are discounting these remaining 151.5 claimed hours by 10 per cent, and so we are granting 136.4 of the claimed 187.5 hours for preparation. If the LLG determined that it needed its expert witness to spend additional time in preparation, then it is reasonable for the LLG to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing.

[283] Benga argued that the time and expenses Dr. McKenna charged for his site visit to Grassy Mountain should not be eligible for costs, claiming that it was not a “technical field visit” and not directly necessary for his evidence. However, we agree with the LLG’s submission that the site visit was a useful component of Dr. McKenna’s preparation and, in fact, he was likely better prepared to contribute information and analysis that helped us in our review because he saw the site in person. We accept all of Dr. McKenna’s costs related to the site visit, including 8 hours of travel time at half his normal rate plus travel costs.

[284] Benga objected to the amount of hours claimed for Dr. McKenna for hearing participation, because, as for other experts, Benga suggested their hearing participation should be limited to a small window around the time that the expert was presenting. Benga also objected to any hours being claimed for Dr. McKenna for the final argument, because it stated that this is solely the responsibility of counsel. We addressed and rejected these arguments from Benga elsewhere in this report.

[285] Dr. McKenna claimed 10.5 hours of attendance at the hearing, which we find to be a reasonable level of participation for his topic areas, particularly as he participated in discussions of two different topic areas during the hearing. We accept his claim of 10.5 hours for hearing attendance. Likewise, we accept and grant the claim for Dr. McKenna’s 11.5 hours for contributing to the preparation of final argument.

Jim Young

[286] The LLG submitted a costs claim for \$10,014.63 for professional fees and GST for Jim Young (Jim Young Atmospheric Services Inc.). The claim charged 13 per cent tax, which appears to be a provincial HST rate rather than the GST, but we have only awarded GST.

Table 17: Professional fees claimed by the LLG for Jim Young and awarded by the panel

Section	Claim	Awarded
Preparation	31 hrs @ \$125 = \$3,875	31 hrs @ \$125 = \$3,875
Attendance	28.5 hrs @ \$175 = \$4,987.50	28.5 hrs @ \$175 = \$4,987.50
Argument		
GST	\$1,152.13	\$443.13
Total	\$10,014.63	\$9,305.63

[287] Dr. Young presented information related to air quality and dust. His evidence was useful to the panel in understanding the potential impacts of the project, and we find he made a substantial contribution to the hearing.

[288] Benga argued that the hours claimed by Dr. Young should be significantly reduced. Benga claimed that his preparation and hearing attendance time were excessive compared with the results of Benga's proposed formula for allowable preparation time, and he should not have attended as much of the hearing. As we explained for other witnesses, we reject Benga's proposed formula to determine eligible preparation time for expert witnesses, and we accept the usefulness of expert witnesses observing the hearing sessions for their topic areas, to reduce duplication and help the panel by providing useful information.

[289] Benga also argued that his time supporting the final argument (which was included in his hearing attendance time) should be disallowed, because experts should not be contributing to a final argument. As we have stated for other witnesses and in the earlier section on the general approach taken by the panel, we reject this position and agree that it is reasonable for expert witnesses to contribute to the preparation of a final argument.

[290] We find the claimed costs for Dr. Young to be reasonable and accept and grant all of Dr. Young's claimed costs, with the exception of the tax rate as discussed above.

John Dennis

[291] The LLG submitted a costs claim for \$33,516.00 for professional fees and GST for Dr. John Dennis (SolAero Ltd.).

Table 18: Professional fees claimed by the LLG for John Dennis and awarded by the panel

Section	Claim	Awarded
Preparation	124 hrs @ \$240 = \$29,760	24.8 hrs @ \$240 = \$5,952
Attendance	7 hrs @ \$240 = \$1,680	1.4 hrs @ \$240 = \$336
Argument	2 hrs @ \$240 = \$480	0.4 hrs @ \$240 = \$96
GST	\$1,596.00	\$319.20
Total	\$33,516.00	\$6,703.20

[292] Dr. Dennis was one of the few expert witnesses who presented information that we did not find to be particularly useful in our understanding of project effects. We placed low weight on the evidence he provided relating to the health impacts of coal mining in the Appalachian Mountains because he did not draw a clear connection to how this was relevant to the Grassy Mountain environment. We also did not agree with his interpretation of the third-party information that he included in his expert report. However, we accept that Dr. Dennis was attempting to be helpful to the panel and undertook the analysis in good faith. His evidence was useful to the extent that it identified a number of limitations of the approach taken by Benga to the human health risk assessment for the project and the potential for other types of health risks.

[293] Benga submitted that only about 12 hours of Dr. Dennis' claim should be accepted. Benga submitted that Dr. Dennis' work was not useful to the panel, that he spent unnecessary time preparing presentation materials, that his allowable hearing attendance time should be limited to the time he was giving direct evidence, and that he should not have contributed to the preparation of the final argument.

[294] The LLG responded that Benga's proposed massive reduction in allowable time for Dr. Dennis was because Benga did not like the information he presented, and that concerns around the citation of

other experts by Dr. Dennis were a “red herring.” Also, the LLG argued that having experts contribute to final argument is standard practice.

[295] We agree with Benga that a substantial reduction in claimed costs is appropriate for Dr. Dennis. In this case, the expert undertaking the work failed to make the necessary connections to establish that the work was useful to the panel to help us understand the impacts of the project. The LLG had the responsibility to identify the shortcomings in this work before presenting it, and that triggers the LLG’s responsibility to share in a higher proportion of the costs for this work. We are therefore disallowing 80 per cent of Dr. Dennis’ claimed hours and are only granting 26.6 of his claimed 133 hours.

Chris Joseph (plus Thomas Gunton and Cameron Gunton)

[296] The LLG submitted a costs claim for \$24,556.88 for professional fees and GST for Chris Joseph and his associates (Swift Creek Consulting).

Table 19: Professional fees claimed by the LLG for Chris Joseph and associates and awarded by the panel

Section	Claim	Awarded
Preparation	Joseph: 77 hrs @ \$200 = \$15,400 Joseph / T Gunton / C Gunton: 13.75 hrs @ \$250 = \$3,437.50 Joseph / C Gunton : 29.5 hrs @ \$100 = \$2,950 Subtotal: \$21,787.50	Joseph : 77 hrs @ \$200 = \$15,400 Joseph / T Gunton / C Gunton : 13.75 hrs @ \$250 = \$3,437.50 Joseph / C Gunton: 14.75 hrs @ \$100 = \$1,475 Subtotal: \$20,312.50
Attendance	Joseph: 8 hrs @ \$200 = \$1,600	Joseph: 8 hrs @ \$200 = \$1,600
Argument		
GST	\$1,169.38	\$1095.63
Total	\$24,556.88	\$23,008.13

[297] Dr. Joseph presented information related to economic aspects of the project. His evidence helped the panel understand the potential impacts of the project, and we find that he made a substantial contribution to the hearing.

[298] Benga submitted that the supporting information provided with this claim did not adequately identify the split of tasks and responsibilities between Dr. Joseph, and Thomas and Cameron Gunton. The LLG replied that the role of Thomas Gunton was adequately explained by Dr. Joseph, in that he provided a peer review of the report. We agree with Benga that the role of Cameron Gunton is not clear, and so we have disallowed half of the claimed 29.5 hours for the preparation time that was split between Dr. Joseph and Cameron Gunton. We find the remaining hours claimed for preparation to be reasonable, as well as the split rates claimed based on the mix of experience of Dr. Joseph’s different collaborators (as set out in the summary table), and we are granting a total of 105.5 of the claimed 120.25 hours for preparation.

[299] Benga also submitted that expert witnesses should not assist counsel with cross-examination questions, and that Dr. Joseph’s evidence was duplicative of the evidence presented by Mr. Thompson from the Coalition. As we have explained in the earlier section on the general approach taken by the panel, we accept that it is appropriate for experts to support counsel by contributing to cross-examination questions and the preparation of a final argument. As for duplication, although Dr. Joseph and Mr. Thompson both addressed economic issues and discussed the differences between economic impact analysis and cost-benefit analysis, we found that they each presented distinct perspectives on the subject

matter and both perspectives helped us understand the effects of the project. While Benga also argued that the claimed hearing attendance time should be reduced and that the preparation time was unreasonable, we have addressed these concerns previously in this decision.

[300] We find the hours claimed for hearing attendance to be reasonable, and therefore are granting the claimed eight hours for this period.

Attendance honoraria

[301] The LLG claimed a total of \$800.00 in participant honoraria and \$936.30 in related travel costs for four individuals. There were minor errors in the GST calculation but they were not material, and we applied the correct GST calculation in our award.

Table 20: Participant honoraria and travel costs claimed by the LLG and awarded by the panel

Participant	Claimed	Awarded
John Lawson	\$200 honorarium \$181.80 travel costs	\$200 honorarium \$181.80 travel costs
Bobbi Lambright	\$200 honorarium \$729.06 plus \$25.44 GST travel costs	\$200 honorarium \$486.04 plus \$24.30 GST travel costs
Sid Marty	\$200 honorarium	\$200 honorarium
Bill Trafford	\$200 honorarium	\$200 honorarium
Total	\$1,736.30	\$1,492.14

[302] On the question of attendance honoraria for individual members of the LLG, Benga agreed with the LLG claim of \$200 each for four participants, as well as the mileage claim for Mr. John Lawson. We accept these claimed costs.

[303] However, Benga argued that the disbursements of three nights hotel plus gas for Ms. Bobbi Lambright was grossly disproportionate to her role in the hearing, and Benga pointed out that another member of this group of non-expert witnesses who lives a similar distance from Calgary claimed no hotel costs. The LLG responded that there was uncertainty in when Ms. Lambright would appear before the panel and that is why she required more than a one-night hotel stay. We agree that there was some uncertainty in the timing of this group's appearance, and that more than one night's hotel stay is reasonable on this basis, but we find that a three-night hotel stay is excessive and beyond the limits of how much uncertainty existed in the timing of the group's appearance. We accept only two-thirds of the claimed disbursements for Ms. Lambright.

Conclusion

[304] In summary:

- LLG claim: \$377,833.92
- costs awarded: \$261,947.07
- minus: deduction for no adequate attempt to use other funding sources, specifically the federal Participant Funding Program: -\$21,600.00
- balance: \$240,347.07

[305] The approved costs claim owing to the LLG is **\$240,347.07**.

Costs Claim of the Timberwolf Wilderness Society

[306] The Timberwolf Wilderness Society submitted a costs claim for \$88,146.09 (including GST), broken down as follows. There were minor discrepancies between the forms submitted, and minor calculation errors, but they were not material.

- representative fees \$44,040.00
- expert and analyst fees \$40,293.00
- disbursements and expenses \$211.09
- participation honoraria \$600.00
- GST \$3,002.00

Cost factors and principles

[307] Benga submitted that the costs claimed for all Timberwolf's experts should be dismissed in its entirety, and professional fees for Timberwolf's representative, Michael Sawyer of Hayduke Associates Ltd., should be significantly reduced. Benga submitted that Timberwolf's evidence contained significant errors, and also that it was duplicative of evidence presented by Fisheries and Oceans Canada and irrelevant to our mandate. In the alternative, Benga suggested that Timberwolf's fees should be reduced by 50 per cent.

[308] Timberwolf responded that its costs claim is reasonable, necessary, and consistent with the factors in the *Rules of Practice*. It objected to Benga's characterization of Timberwolf's motivations. Timberwolf submitted that the issues it raised with respect to fisheries in particular are highly relevant to the panel's mandate. Timberwolf also submitted that if Benga believed that Timberwolf's submissions or cross-examination during the hearing were irrelevant, it was incumbent on Benga to challenge its relevancy but it did not do so.

[309] We find that Timberwolf's participation in this proceeding was consistent with a number of the key factors and considerations we discussed in the introductory section on the general approach taken by the panel.

[310] Timberwolf participated actively in the hearing, on a number of different topic areas. It submitted expert evidence, some of which was useful to the panel to better understand the impacts of the project, but some of which was not particularly useful. Its cross-examinations of Benga generally helped us better understand Benga's evidence. It coordinated with a number of other participants to divide up topics, and demonstrated that it was attempting to be efficient in its participation.

[311] Timberwolf spent time and resources on this proceeding that are not included in this costs claim, including time before we issued the notice of hearing, and time we are disallowing from this costs claim.

[312] We discuss how we applied the principles that informed our decision in each of the following sections.

Representative fees

[313] Timberwolf claimed \$46,453.09 in professional fees, disbursements, and GST for Mr. Sawyer. There was a minor calculation error in the GST claimed, but it was not material and we applied the correct GST calculation in our award.

[314] Mr. Sawyer is not a lawyer but performed similar tasks to other counsel, coordinating the presentation of Timberwolf's evidence, conducting cross-examinations, and preparing the final argument during the hearing. Mr. Sawyer claimed fees at the hourly rate of \$150 per hour. Mr. Sawyer has a graduate degree in a relevant field for this proceeding and has 30 years of professional and regulatory experience appearing before provincial, national, and international regulatory tribunals. Benga did not take issue with Mr. Sawyer's hourly rate. Considering his experience, and the complexity of this joint federal-provincial review panel process, we accept that this is a reasonable hourly rate for Mr. Sawyer.

[315] Benga submitted that the hours claimed by Mr. Sawyer were not reasonable, based on the formula it proposed for evaluating a reasonable number of hours based on the time we awarded to participants at the hearing. Benga proposed that the time claimed by Mr. Sawyer should be reduced by 50 per cent because of errors in Timberwolf's evidence, and that the evidence was not relevant to our mandate. Benga also submitted that Timberwolf did not provide adequate information to evaluate the claimed hours. Benga also objected to Timberwolf's claimed disbursements of \$211.09 for items such as photocopying and binders.

[316] Timberwolf objected to Benga's calculation of reasonable hours based on the amount of time we awarded at the hearing. Timberwolf submitted that Benga's application was voluminous, disjointed, and difficult to follow, making considerable preparation time necessary. Timberwolf stated that the professional fees claimed for Mr. Sawyer were modest in comparison with those presented by other participants who engaged counsel for this proceeding. Timberwolf also disagreed with Benga's claim that it had not submitted adequate information to explain and support its costs claim.

[317] Timberwolf submitted that, although it did not form formal coalitions with other participants, it did coordinate with these other intervenors to determine who would focus on matters relating to westslope cutthroat trout and their critical habitat, and this coordination made a significant contribution to the orderly and efficient conduct of the hearing. Timberwolf also submitted that Benga's objection to its minor disbursement costs is unreasonable and petty.

[318] We break down Timberwolf's claim for representative fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours were reasonable to support Timberwolf's contribution:

- preparation: 52.5 hours (6.6 days)
- attendance: 191.9 hours (24 days)
- argument: 49.2 hours (6.2 days)

[319] We find the amounts claimed for preparation and argument to be relatively modest and reasonable, considering that Timberwolf engaged actively in the hearing. We also find that Timberwolf's

claim for hearing attendance of 191.9 hours was reasonable. As discussed earlier in this decision, we understand that these hours include both time spent at the hearing, as well as preparation time during the period that the public hearing took place.

[320] As we explained in the section on the general approach taken by the panel, we do not accept Benga's approach for determining the number of hours that are reasonable. Benga also argued that the claimed time for professional fees should be reduced by 50 per cent because Timberwolf's evidence contained errors and was not relevant to the panel's mandate.

[321] We disagree with Benga that Timberwolf's evidence was not relevant to our mandate. Impacts to westslope cutthroat trout and whether the project would be able to satisfy the requirements of the *Species at Risk Act* were central to our consideration of the project, and Timberwolf evidence was useful in this regard. However, we agree that there were some errors in the evidence presented by Timberwolf's expert witnesses, and that Mr. Sawyer had some responsibility to catch those errors before the evidence was presented. We are therefore disallowing 20 per cent of the claimed time for representative fees by Timberwolf, and are granting 42 hours for preparation, 153.5 hours for hearing attendance, and 39.4 hours for the final argument.

[322] With respect to the minor disbursements claimed by Timberwolf, we find that claimed disbursements for photocopying and binder preparation are reasonable, and we are granting the claimed disbursements.

[323] To summarize, we are granting the following amounts from the claimed representative fees for Timberwolf.

Table 21: Representative fees claimed by Timberwolf and awarded by the panel

Section	Claimed	Awarded
Preparation	52.5 hrs @ \$150 = \$7,875	42 hrs @ \$150 = \$6,300
Attendance	191.9 hrs @ \$150 = \$28,785	153.5 hrs @ \$150 = \$23,025
Argument	49.2 hrs @ \$150 = \$7,380	39.4 hrs @ \$150 = \$5,910
Disbursements	\$211.09	\$211.09
GST	\$2,212.55	\$1,772.30
Total	\$46,453.09	\$37,218.39

Expert witnesses

[324] Timberwolf engaged three expert witnesses. For each of these experts, we break down the claimed fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours, and in some cases, we present the numbers as eight-hour days for ease of comparison. In assessing the claims, we primarily considered whether the hours claimed were reasonable given how much the expert contributed to our understanding of the issues and whether they were directly and necessarily related to the proceeding. However, comparing an expert's claim to those of other experts in the proceeding can be useful, and where relevant we also provide this comparison.

[325] Timberwolf coordinated with other participants to focus its expert witnesses on certain topics. We found that these experts contributed in varying degrees to our understanding of the issues before the

panel, as we discuss below under each expert. Some of these experts covered topics that overlapped with some of the evidence provided by other expert witnesses, but we found the overlap to be minor.

[326] As we discussed in the section on the general approach taken by the panel, we reject Benga’s proposed formula for determining the appropriate amount of preparation or hearing attendance time required by expert witnesses to participate in the hearing. Benga argued that the eligible hearing attendance times for some of Timberwolf’s expert witnesses should be limited to a small window around the time the witnesses were actively presenting. We disagree with this argument because understanding the other evidence being presented in a witness’ topic area can help make their own presentations efficient and help counsel and the panel understand the technical issues that arise in their areas of expertise.

[327] Timberwolf and Benga exchanged detailed arguments about each expert engaged by Timberwolf. Below, we address key questions related to individual experts.

David Mayhood

[328] Timberwolf claimed \$16,800.00 for professional fees and GST for David Mayhood (Freshwater Research Limited).

Table 22: Professional fees claimed by Timberwolf for David Mayhood and awarded by the panel

Section	Claim	Awarded
Preparation	162.7 hrs @ \$80 = \$13,016	162.7 hrs @ \$80 = \$13,016
Attendance	33.8 hrs @ \$80 = \$2,704	33.8 hrs @ \$80 = \$2,704
Argument	3.5 hrs @ \$80 = \$280	3.5 hrs @ \$80 = \$280
GST	\$800	\$800
Total	\$16,800	\$16,800

[329] Mr. Mayhood presented information related to fisheries. His evidence was useful to the panel in understanding the potential impacts of the project, and we find that he made a substantial contribution to the hearing.

[330] Because Benga’s material on fisheries on the record was extensive and not particularly well organized, it was reasonable for experts reviewing this material to require a significant amount of time to review it.

[331] Benga argued that the hours for Mr. Mayhood should be significantly reduced or denied outright. Benga also argued that Mr. Mayhood did not provide independent expert analysis because of his role as a director with Timberwolf, and that his appearance at the hearing fell within his normal duties on behalf of Timberwolf. Benga submitted that as a director of Timberwolf, Mr. Mayhood plays a role in determining Timberwolf’s public position on projects and has previously made submissions to the panel as president of Timberwolf, and through his company, Freshwater Research Limited, on behalf of Timberwolf. Benga added that it was after making these submissions on Timberwolf’s behalf that Timberwolf retained Mr. Mayhood to provide an expert report to the panel.

[332] Timberwolf responded that Mr. Mayhood has many decades of professional experience as a fishery consultant, with much of that time spent working on conservation issues relating to westslope cutthroat trout in southwestern Alberta, and that he is a highly regarded expert on these matters who has contributed directly to recovery and management efforts of both provincial and federal government

agencies. Timberwolf asserted that volunteers who work unpaid on one aspect of an issue should be eligible to be paid when they work professionally on another aspect of it. Timberwolf pointed out that many professionals, including Mr. Mayhood, routinely volunteer time and expertise to nongovernmental organizations. Timberwolf also asserted that Mr. Mayhood undertook, under oath, to provide unbiased evidence to the panel, and he did so.

[333] The important consideration for the panel is whether the expert provided useful information for us to better understand the project. We find that the expert's involvement with the participant organization does not detract from this usefulness or merit a reduction in costs. Although Mr. Mayhood is a director with Timberwolf and appears to have a volunteer relationship with the organization, he provided credible expert testimony that helped us understand the fisheries issues before the panel.

[334] Mr. Mayhood claimed 162.7 hours (20.3 eight-hour days) of preparation time. Considering the amount and complexity of material on the record for the topic areas that Mr. Mayhood covered, and the fact that he only claimed a rate of \$80 per hour when his years of experience would merit a higher rate, we find that the overall claim for preparation was reasonable and we are granting the costs claimed.

[335] Benga submitted that about 29 hours of activities by Mr. Mayhood, specifically discussions with Timberwolf's representative, preparing evidence related to the *Species at Risk Act*, and meeting with a lawyer, were ineligible for a costs award. We accept that these activities helped ensure that Mr. Mayhood was working efficiently in preparing and presenting information to the panel. Benga also applied the formula we rejected to determine an appropriate number of eligible hours for Mr. Mayhood, and we have explained in the section on the general approach taken by the panel that we do not accept Benga's approach to this matter.

[336] Mr. Mayhood claimed 33.8 hours (slightly more than four days) for hearing attendance. Given that the topic of fisheries was integral to our consideration, there was considerable discussion on this topic at the hearing, and the water and fisheries topic areas at the hearing ran to nine days, we find that it was reasonable for him to claim this amount of participation for the hearing, and we are granting his claimed 33.8 hours. We also accept that his hours spent supporting the final argument are reasonable and are granting his claimed 3.5 hours for this period.

Ann-Lise Norman and Kabir Rasouli

[337] Timberwolf submitted a claim for \$21,250.00 for professional fees for Dr. Ann-Lise Norman and \$3,043.00 in professional fees for Dr. Kabir Rasouli. Neither of these two experts claimed GST, so we have not included GST in our award.

Table 23: Professional fees claimed by Timberwolf for Ann-Lise Norman and Kabir Rasouli and awarded by the panel

Section	Claim	Awarded
Preparation	Norman: 58 hrs @ \$250 = \$14,500 Rasouli: 22.1 hrs @ \$112.29 = \$2,481.61 Subtotal: \$16,981.61	Norman: 14.5 hrs @ \$250 = \$3,625 Rasouli: 5.5 hrs @ \$112.29 = \$617.60 Subtotal: \$4,242.60
Attendance	Norman: 27 hrs @ \$250 = \$6,750 Rasouli: 5 hrs @ \$112.29 = \$561.45 Subtotal: \$7,311.45	Norman: 6.75 hrs @ \$250 = \$1,687.50 Rasouli: 1.25 hrs @ \$112.29 = \$140.36 Subtotal: \$1,827.86
Total	\$24,293.06	\$6,070.46

[338] We address these two expert witnesses together, because there was some similarity to our findings on the information submitted by these two expert witnesses.

[339] Benga submitted that the costs claims for both these experts should be denied in full.

[340] Benga submitted that Dr. Norman's evidence demonstrated gross errors, a complete lack of familiarity with the project, and a lack of expertise in areas upon which she testified (for instance the design and dimensions of end pit lakes). Benga added that her hours claimed are grossly disproportionate to the role she played and any assistance she provided to the panel, and also that she did not provide sufficient information to support the claim.

[341] Timberwolf replied that Dr. Norman identified an issue that Benga had ignored, which is of use to the panel, and did not claim to be an expert in mine or dam construction. Timberwolf added that she had to review a large amount of material to prepare her report. In their cost submissions, both Benga and Timberwolf argued about what Dr. Norman did or did not admit during the hearing about future climate change, but a cost submission is not the place for arguments on facts.

[342] Benga submitted that Dr. Rasouli's evidence was inconsistent, baseless, and not credible, and did not contribute to a better understanding of the issues before the panel. Benga identified a number of potential errors in this evidence. Timberwolf responded that Dr. Rasouli helped highlight an area of potential risk related to climate change, which Benga had not considered in its assessments.

[343] Both experts spoke to the issues related to how climate change may affect the environment in which the project would operate. They identified the potential for climate change to change the precipitation regime affecting the project, which in turn could have implications for water management and dam design. However, neither of them effectively considered the interaction of this changing precipitation regime with the dam design and water management considerations that Benga would need to adopt to prepare for and adapt to this changing precipitation regime. Benga argued that neither witness had expertise in this area, a claim with which we agree. While these experts did highlight somewhat useful information about the changing climate, they did not effectively integrate this information into considerations about the project in a way that would have effectively informed the panel.

[344] Dr. Norman also spoke to the potential for greenhouse gas emissions to be emitted from the end pit lake, which Benga did not consider. It became apparent during the hearing that Dr. Norman made some mistakes in her consideration of this issue, and in fact this potential source of additional greenhouse gas emissions would have been relatively insignificant.

[345] We accept that both these experts undertook their work in good faith and attempted to provide the panel with useful information, but neither made a significant contribution to our understanding of the issues that informed our decision-making. While these experts provided information about potential climate change effects that was somewhat helpful, they could have done a much better job of effectively incorporating that information into the details of the project. Expert witnesses should carefully consider the information they present to a review panel and take care to ensure it effectively helps us understand the potential impacts of the project. Considering all this, we are discounting the claimed hours for these two experts by 75 per cent and granting a total of 21.25 hours for Dr. Norman and 6.75 hours for Dr. Rasouli.

Attendance honoraria

[346] Timberwolf submitted a claim for three days of attendance honoraria for Mike Judd, for a total of \$600.00, based on its claim that there was significant uncertainty in when Mr. Judd would need to appear before the panel. Benga argued that this amount is excessive, and Mr. Judd should only be eligible for \$100.00 for a half-day of attendance, given that he appeared before the panel for only one hour.

[347] We agree that there was some uncertainty around the timing when Mr. Judd was to appear before the panel, and it was reasonable for Mr. Judd to be in attendance for the day. We are therefore granting him an honorarium of \$200.00 for his full day.

Table 24: Honorarium claimed by Timberwolf for Mike Judd and awarded by the panel

	Claimed	Awarded
Mike Judd	\$600 honorarium	\$200 honorarium

Conclusion

[348] In summary:

- Timberwolf claim: \$88,146.09
- costs awarded: \$60,288.85

[349] The approved costs claim owing to Timberwolf is **\$60,288.85**

Costs Claim of the Municipal District of Ranchland No. 66

[350] The Municipal District of Ranchland No. 66 submitted costs claim of \$185,115.26 (including GST), broken down as follows:

- legal fees \$145,052.00
- expert and analyst fees \$29,332.50
- disbursements and expenses \$1,533.87
- participation honoraria \$400.00
- GST \$8,796.89

Cost factors and principles

[351] Ranchland submitted that it is a participant, as contemplated by section 58.1(c) of the *Rules of Practice*, and therefore should be entitled to repayment of the reasonable fees it has incurred for lawyers, experts, and disbursements.

[352] Ranchland submitted that it has incurred much greater costs than are included in this costs claim since Benga filed the original application for the project. It stated that Benga did not adequately consult with it or consider its concerns.

[353] Ranchland also submitted that it had unique areas of concern that were not covered by other participants, including noxious weeds and water allocation, and that its expert evidence was valuable in assisting the panel on the topic of vegetation.

[354] Ranchland also submitted that its participation in the proceeding was always reasonable and efficient, and that it constrained itself to its allocated time periods and did not file any unnecessary evidence or provide any duplicated testimony.

[355] Benga submitted that Ranchland's costs claim must be denied in full for the following reasons:

1. Ranchland participated in the hearing pursuant to its statutory mandate and demonstrated no exceptional circumstances warranting costs.
2. Ranchland made submissions that did not help the panel and worked against a clear understanding of the issues in the hearing.
3. Ranchland improperly used its costs claim to advance arguments about things unrelated to the application and, rather, focused on government policy.
4. Ranchland did not provide any compelling reason why it should not bear its own costs.

[356] Benga also submitted that Ranchland claimed disproportionate professional fees for legal counsel and experts.

[357] Ranchland responded by pointing out that there is nothing in the *Municipal Government Act* that compelled its active participation in this proceeding beyond the near unanimous desire of its constituents to resist the project. It reiterated the AER's 2018 costs order for Bashaw Oil Corporation's application for sour wells, in which the AER held that statutory bodies, such as a municipal district, fall within the *Rules of Practice* definition of a "participant." Accordingly, Ranchland stated that Benga's suggestion that it should be disqualified from any costs claim because it is a statutory body would go against the AER's own precedent.

[358] Ranchland also responded that its submissions and behaviour during the hearing addressed a number of different topic areas within the panel's mandate, were not excessive or unreasonable, and did not unnecessarily lengthen the proceeding.

[359] We find that the participation of Ranchland in this proceeding was consistent with a number of the key factors and considerations we discussed in the section on the general approach taken by the panel.

[360] Ranchland participated actively in the hearing on a number of different topic areas. It submitted expert evidence that was useful to the panel's understanding of the impacts of the project on the residents of Ranchland, and their economic activities (such as ranching) and ways of life. Its cross-examinations of Benga generally helped us better understand Benga's evidence. However, in some cases, we found that Ranchland claimed an excessive amount of time associated with the proceeding. We discuss these below.

[361] Ranchland spent time on this proceeding that is not included in this costs claim, including time before we issued the notice of hearing, and time which we have disallowed from this costs claim.

[362] Benga argued that Ranchland should have its costs claim dismissed because as a municipal government participating in a hearing, it was simply acting within its statutory responsibility. However, Benga also explicitly stated that, "While Benga can acknowledge that participant municipalities may be entitled to costs where their participation falls outside their statutory mandate and where a hearing is unusually complex and lengthy..."

[363] Ranchland responded that it fits the definition of a participant in the AER costs claim process, as has been found in a previous AER costs claim (the Bashaw cost order). Furthermore, Ranchland pointed out that Benga apparently funded the Municipality of Crownsnest Pass, which supported the project during the proceeding, and municipal governments should not have to support a project in order to receive funding to participate in an AER hearing.

[364] We find that it is reasonable for Ranchland to be eligible for costs, given the nature of this proceeding. Its participation is not simply a normal function of its statutory responsibility — in fact, Benga’s attempt to explain how it used this phrase did not clarify what exactly it considered inside or outside a municipality’s statutory responsibility. The Bashaw costs order held that a municipality can be a participant and potentially eligible for costs, although the panel in that case did not award costs to the municipality due to the facts of that proceeding, pointing out that the hearing in that case was not particularly lengthy or complex. Joint review panel hearings are uncommon occurrences and cannot be considered a “normal” function. We find that this proceeding clearly satisfies the criteria, suggested by the Bashaw cost order, of being a lengthy and complex hearing.

[365] We agree that a municipality should have the option of choosing to support or oppose a proposed project that might affect it, and if it chooses to oppose a project and cannot negotiate a funding arrangement with a project proponent, then the AER costs claim process is a viable tool to attempt to support its participation. Whether the municipality is successful would depend on the facts of the proceeding.

[366] Benga also argued that Ranchland had adequate resources and had not demonstrated any special circumstances to justify a costs award. This is similar to the argument that Benga applied to several of the participants with the ability to fundraise to support their participation. As we discussed in the earlier section on the general approach taken by the panel, we accept that participants in this proceeding incurred more costs than we are accepting in these costs claims, and their ability to use other sources of funding to support these costs is reflective of their shared responsibility for participation in the proceeding. There is no inherent reason that a municipal government should be ineligible to receive costs in an AER proceeding, and the factors guiding our decision-making on costs claims do not specify any such condition.

[367] We discuss how we applied the principles that informed our decision in the following sections.

Legal fees

[368] Ranchland submitted a claim for \$152,520.25 for legal fees, disbursements, and GST for Carscallen LLP.

[369] Benga highlighted that Ranchland submitted costs for five counsel and submitted that the AER’s normal practice is to allow legal fees for one legal counsel, or in the unusual case where more than one counsel is necessary, the second counsel should be a junior lawyer. Benga submitted that the number of counsel and time claimed for legal services are excessive, unnecessary, demonstrated inefficiency, and included costs unrelated to the hearing, and should be significantly discounted. Benga identified a number of items in the supporting information for the claim for which costs should not be awarded. Benga also identified that almost 19 hours were claimed to support the preparation of the costs claim, which is not allowed under the *Rules*.

[370] We break down Ranchland's claim for legal fees into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. We list total hours and, for ease of comparison, we present the numbers as eight-hour days. In assessing the claims, we primarily considered whether the hours were reasonable and necessary to support Ranchland's contribution. However, because comparing a participant's claim with those of other participants in the proceeding can be useful, where relevant we also provide this comparison:

- Preparation: 316 hours (39.5 days). This was the highest number of hours claimed for legal fees for preparation, among the various costs claims that we reviewed. It was considerably higher than even the preparation time claimed by participants who provided substantially more information to the panel than Ranchland.
- Attendance: 142 hours (17.8 days).
- Argument: 69.1 hours (8.6 days).

[371] We note that Ranchland made use of one senior counsel, Michael Niven, and a counsel with intermediate experience, Ryan Barata, in a support role. It also submitted time for the preparation period from three other members of the Carscallen team (Kevin Horan, Zubair Hussain, and Jasdeep Nijer). Given that Ranchland did not participate in every different topic area during the hearing, we find that it would have been reasonable to utilize at most two counsel for the process, a senior and junior counsel.

[372] In all costs claims for which a participant included legal fees for more than two counsel, we disallowed the hours from the additional junior counsel. We consider that the AER costs claim process is not intended to support a legal team of more than two lawyers, with one in a senior role and the other in a junior role. If Ranchland's legal team determined that it needed the additional support from additional junior lawyers, then it is reasonable for Ranchland to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing. We are therefore disallowing all the claimed time from the three most junior counsel (Horan, Hussain, and Nijer).

[373] Furthermore, we note that Ranchland claimed time for Mr. Barata at the rate of \$280.00 per hour. From what we observed, Mr. Barata played a supporting role to Mr. Niven at the hearing, as opposed to taking a clear lead on certain topic areas and acting as a more experienced counsel. Based on this, we find that it is reasonable to grant costs for any work done by Mr. Barata at the more junior lawyer rate of \$240.00 per hour. We have applied this rate in the summary table of costs below.

[374] For the preparation period in advance of the hearing, the district claimed the highest number of hours for legal fees for all the participants. This was despite the fact that Ranchland submitted less information, engaged fewer expert witnesses, and participated substantively in fewer topic areas than a number of other participants. Although Ranchland's legal team conducted cross-examinations in a range of topic areas, it only submitted direct expert evidence on one topic (Dr. Osko's report) and provided brief oral presentations from two municipal counsellors. Although we agree that the amount of information on the record was lengthy and complex, we find that Ranchland's legal team should have been able to be more efficient in its preparation time, and its claim for this period was excessive. The three junior counsel billed 28.7 hours during the preparation period, which we disallowed. Of the remaining 287.3 hours of preparation time, we are disallowing 50 per cent of these hours, to be applied to the time billed by the more junior counsel, Mr. Barata. If Ranchland's legal team determined that it needed to spend an

excessive amount of time on preparation, then it is reasonable for Ranchland to bear this additional cost as part of its shared responsibility for the costs of participating in an AER hearing. We are therefore granting 143.7 hours of the claimed preparation time for Ranchland — 117.9 hours for Mr. Niven and 25.8 hours for Mr. Barata.

[375] For hearing attendance, we accept that Ranchland’s claim of 101.5 hours for Mr. Niven and 91 hours for Mr. Barata is reasonable, and we are granting these hours. As indicated above, we are disallowing the 40.5 hours billed for hearing attendance by Jasdeep Nijer, one of the junior counsel on the legal team.

[376] Ranchland billed a total of 69.1 hours for counsel to prepare final argument. As indicated above, we are disallowing 21.4 hours of this time from Mr. Nijer. We agree with Benga that Ranchland apparently included hours that were directed toward the eventual costs claim, and these amounts are ineligible for costs as a participant cannot claim its expenses for preparing a costs claim. Ranchland did not provide any response to this argument from Benga. We are therefore also disallowing 7.6 hours for Mr. Niven and 11.1 hours for Mr. Barata. For the final argument, we are granting 2.9 hours for Mr. Niven, and 25.6 hours for Mr. Barata.

[377] We find that the minor amounts of disbursements claimed by counsel for items such as photocopying and conference calls are reasonable, and we accept the claimed disbursements for legal work of \$215.65.

[378] To summarize, we accept the following amounts from the claimed legal fees for Ranchland.

Table 25: Legal fees claimed by the Municipal District of Ranchland No. 66 and awarded by the panel

Section	Claimed	Awarded
Preparation	Niven: 117.9 hrs @ \$350 = \$41,265 Barata: 169.4 hrs @ \$280 = \$47,432 Nijer/Horan/Hussain: 28.7 hrs @ mix of \$140 and \$240 = \$4,408 Subtotal: \$93,105	Niven: 117.9 hrs @ \$350 = \$41,265 Barata: 25.8 hrs @ \$240 = \$6,192 Nijer/Horan/Hussain: 0 hrs Subtotal: \$47,457
Attendance	Niven: 10.5 hrs @ \$350 = \$3,675 Barata: 91 hrs @ \$280 = \$25,480 Nijer: 40.5 hrs @ \$140 = \$5,670 Subtotal: \$34,825	Niven: 10.5 hrs @ \$350 = \$3,675 Barata: 91 hrs @ \$240 = \$21,840 Nijer: 0 hrs Subtotal: \$25,515
Argument	Niven: 11 hrs @ \$350 = \$3,850 Barata: 36.7 hrs @ \$280 = \$10,276 Nijer: 21.4 hrs @ \$140 = \$2,996 Subtotal: \$17,122	Niven: 2.9 hrs @ \$350 = \$1,015 Barata: 25.6 hrs @ \$240 = \$6,144 Nijer: 0 hrs Subtotal: \$7,159
Disbursements	\$205.38	\$205.38
GST	\$7,262.87	\$4,016.82
Total	\$152,520.25	\$84,353.20

Expert witnesses

Terry Osko and Circle T Consulting

[379] Ranchland submitted a claim for \$32,195.01 for professional fees, disbursements, and GST for Terry Osko and his associates from Circle T Consulting.

Table 26: Professional fees and disbursements claimed by the Municipal District of Ranchland No. 66 for Terry Osko and awarded by the panel

Section	Claim	Awarded
Preparation	Osko: 119 hrs @ \$200 = \$23,800 Potter :2.5 hrs @ \$120 = \$300 Waine: 4.25 hrs @ \$90 = \$382.50 Cooley: 36 hrs @ \$62.50 = \$2,250 Subtotal: \$26,732.50	Osko: 107.1 hrs @ \$200 = \$21,420 Potter: 0 hrs @ \$120 Waine: 0 hrs @ \$90 Cooley: 0 hrs @ \$62.50 Subtotal: \$21,420
Attendance	Osko: 12 hrs @ \$200 = \$2,400	Osko 8 hrs @ \$200 = \$1,600
Argument	Osko: 1 hrs @ \$200 = \$200	Osko 1 hrs @ \$200 = \$200
Disbursements	\$1,328.49	\$791.20
GST	\$1,533.05	\$1,200.56
Total	\$32,195.01	\$25,211.76

[380] Ranchland engaged one expert witness consultant, Dr. Osko from Circle T Consulting, who was supported by three other members of his team. Dr. Osko presented information related to noxious weeds and invasive species. His evidence was useful to the panel in understanding the potential impacts of the project.

[381] We break down the claimed fees for this team into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument. In assessing the claim, we primarily considered whether the hours were reasonable to support the expert's contribution to our understanding of the issues, directly and necessarily related to the proceeding, and how much the expert contributed to our understanding of the issues.

[382] We found that this expert (supported by his team) contributed to our understanding of the issues before the panel. We did not encounter any considerable overlap with information presented by other expert witnesses for other participants.

[383] Benga argued that Ranchland should bear its own costs. In the alternative, Benga argued that the invoices submitted to support this work did not adequately explain and support the claim, and in particular that all the hours from the supporting team members should be disallowed, as well as a large share of Dr. Osko's time. Benga also argued that the information presented by this team included material that was not directly relevant to the panel's mandate, and that the findings in the expert report confirmed that Benga was planning best practices for weeds mitigation measures.

[384] As we discussed in the section on the general approach taken by the panel, we reject Benga's proposed formula for determining the appropriate amount of preparation or hearing attendance time required by expert witnesses to participate in the hearing. Benga argued that the eligible hearing attendance time for Ranchland's expert witness should be limited to a small window around the time he was actively presenting. We disagree with this argument because experts who understand the other evidence being presented in their topic area can make more efficient presentations and help counsel and the panel understand the technical issues that arise in their areas of expertise.

[385] We agree that the supporting information presented by Ranchland for these hours could have been clearer; however, from our review it does not appear that the hours were worked before the notice of hearing was issued. Ranchland should also have provided some information about the roles and activities

of the supporting staff from Circle T Consulting to support its claim for this expense, as is required by *Directive 031*. We are therefore disallowing all of the hours claimed by the supporting team from Circle T Consulting.

[386] After discounting the hours claimed by his support team, Dr. Osko claimed 119 hours of preparation time. This topic area was less complex and less central to our decision on the project than other areas such as water and fisheries, and we find the level of effort was slightly excessive. We are discounting these hours by 10 per cent, and granting 107.1 hours for preparation time.

[387] Dr. Osko also claimed 12 hours for hearing participation time. Given that this topic area was less central to our decision on the project than some other topic areas, we find that it is reasonable for Dr. Osko to claim one day or eight hours for hearing attendance, and we are granting this amount. Dr. Osko's claim of one hour for final argument is also reasonable, and we are granting this amount.

[388] Benga also argued that the disbursements included in this costs claim are not supported or explained, particularly \$537.29 plus GST for "research materials." We agree that this cost merits an explanation, which Ranchland failed to provide in either its original cost application or its reply, and we are disallowing this cost. We accept the remaining disbursements claimed by Circle T Consulting.

Attendance honoraria

[389] Ranchland claimed participation honoraria of \$200.00 each for two of its councillors, Mr. Cameron Gardner and Mr. Ron Davis, to attend the hearing. We appreciated hearing the perspective of both of these individuals, and they were helpful to the panel.

[390] Benga argued that these amounts should not be allowed, because these councillors were appearing within their mandate as representatives of the municipality. We agree with Benga on this point, and we find that participation honoraria are not intended to reimburse elected officials for appearing as representatives of their municipal government, which appears to apply to the role Mr. Gardner and Mr. Davis played in this proceeding. We award no participation honoraria to Ranchland's councillors.

Table 27: Participant honoraria claimed by the Municipal District of Ranchland No. 66 and awarded by the panel

Participant	Claimed	Awarded
Cameron Gardner	\$200 honorarium	\$0
Ron Davis	\$200 honorarium	\$0

Conclusion

[391] In summary:

- Ranchland claim: \$185,115.26
- costs awarded: \$109,564.96

[392] The approved costs claim owing to Ranchland is **\$109,564.96**.

Costs Claim of Barbara Janusz

[393] Barbara Janusz submitted a costs claim for \$3,200.00, consisting of \$700.00 in honoraria for hearing attendance (seven half-days) and \$2,500.00 for preparation time, the maximum amount allowable for this category in the AER costs claims process. She made an opening statement and a presentation, cross-examined several witnesses on a number of topic areas, and submitted a final argument.

[394] Benga argued that Ms. Janusz' actual amount of time spent in active participation was less than seven half-days and this amount should be reduced. Furthermore, Benga argued that Ms. Janusz should have her allowable preparation time reduced to \$500.00, to reflect the top end of what it stated (quoting an earlier cost decision) is the normal range of between \$300.00 and \$500.00 for this category. Benga cited a number of cases in which higher amounts were awarded by AER panels for preparation time and argued that these cases were not reflective of Ms. Janusz' efforts to prepare for this proceeding.

[395] Ms. Janusz replied with a list of areas on which she engaged and tasks she undertook during the hearing and identified the amount of time that she spent to participate in this proceeding. She also reiterated her credentials in law and business, pointing out that she only sought to be reimbursed as a non-technical participant.

[396] We find that Ms. Janusz' efforts as a self-represented participant were useful to the panel in providing insight into some of the local impacts that the project could have. Her cross-examinations provided a number of insightful moments. We find her claim for participation honoraria to be reasonable and award her honorarium for seven half-days, equalling \$700.00.

[397] As for preparation time, Ms. Janusz participated in several topic areas, and the volume of material which she needed to review was extensive and technical, and as several participants have noted, it was not always well organized. We agree with Benga that the maximum amount of \$2,500 must be reserved for rare occasions, but the amount of preparation that Ms. Janusz would have needed to effectively participate, and the complexity of her evidence and cross-examination questions, merits a costs award higher than what Benga submitted is the normal range of such awards for self-represented participants. We therefore find that Ms. Janusz' contributions merit an award for preparation time of \$1,500.00.

[398] The approved costs claim owing to Ms. Janusz is \$2,200.00.

Costs Claim of the Shuswap Indian Band

[399] The Shuswap Indian Band submitted a costs claim for \$5,269.00. The Shuswap Indian Band claimed participation honorarium for Chief Barb Cote's appearance at the hearing (\$400.00), and they also sought \$4,850.00 plus GST in professional fees for by Landmark Resource Management (Landmark). It was not clear what work Landmark performed for the Shuswap Indian Band, as they did not present a report.

[400] Benga agreed with the participation honorarium of \$400.00. However, it argued that the professional fees for Landmark should be disallowed. Benga pointed out that the Shuswap Indian Band received more than \$21,000 from the federal Participant Funding Program, and there was no indication of whether this funding was used to pay for work done by Landmark. Furthermore, because no mention was made of Landmark or its individual staff in any submissions from the Shuswap Indian Band, there is no way to tell whether the work they did was useful or necessary to the panel.

[401] The Shuswap Indian Band did not submit a reply to Benga's submission. We agree with Benga that it is unclear what work was done by Landmark and whether this work was covered by the federal Participant Funding Program. We also do not know whether this work contributed any value to the proceeding or helped us understand the impacts of the project. We therefore deny the claimed costs for Landmark.

[402] We find that the only eligible costs to be awarded to the Shuswap Indian Band are \$400.00 as a participation honorarium.

Order

[403] The AER hereby orders that Benga pay costs for the Coalition of the Alberta Wilderness Association and the Grassy Mountain Landowners Group in the amount of \$178,866.15 and GST in the amount of \$17,005.24 for a total of \$195,871.39. This amount must be paid within 30 days from issuance of this order to

Richard C. Secord
Ackroyd LLP
1500 First Edmonton Place
10665 Jasper Avenue
Edmonton, AB T5J 3S9

[404] The AER hereby orders that Benga pay costs for the Canadian Parks and Wilderness Society (Southern Alberta Chapter) in the amount of \$73,369.00 and GST in the amount of \$4,314.45 for a total of \$77,683.45. This amount must be paid within 30 days from issuance of this order to

Drew Yewchuk
Public Interest Law Clinic
MFH 3310, 2500 University Drive NW
Calgary, AB T2N 1N4

[405] The AER hereby orders that Benga pay costs for the Livingstone Landowners Group in the amount of \$227,920.14 and GST in the amount of \$12,426.93 for a total of \$240,347.07. This amount must be paid within 30 days from issuance of this order to

Gavin S. Fitch
McLennan Ross LLP
Eau Claire Tower
600 – 3 Avenue SW
Calgary, AB T2P 0G5

[406] The AER hereby orders that Benga pay costs for the Timberwolf Wilderness Society in the amount of \$57,716.55 and GST in the amount of \$2,572.30 for a total of \$60,288.85. This amount must be paid within 30 days from issuance of this order to

Michael D. Sawyer
Hayduke & Associates Ltd.

2709 17 Street NW
Calgary, AB T2M 3S4

[407] The AER hereby orders that Benga pay costs for the Municipal District of Ranchland No. 66 in the amount of \$104,347.58 and GST in the amount of \$5,217.38 for a total of \$109,564.96. This amount must be paid within 30 days from issuance of this order to

Michael B. Niven
Carscallen LLP
900, 332 – 6 Avenue SW
Calgary, AB T2P 0B2

[408] The AER hereby orders that Benga pay costs for Barbara Janusz in the amount of \$2,200.00. This amount must be paid within 30 days from issuance of this order to

Barbara D. Janusz
PO Box 1110
Coleman, AB T0K 0M0

[409] The AER hereby orders that Benga pay costs for the Shuswap Indian Band in the amount of \$400.00. This amount must be paid within 30 days from issuance of this order to

Lorena Tegart
RR#2, 3A – 492 Arrow Road
Invermere, BC V0A 1K2

Dated in Calgary, Alberta on December 23, 2021

Alberta Energy Regulator

Alex Bolton, P.Geo.
Presiding Hearing Commissioner

Dean O’Gorman, M.Sc.
Hearing Commissioner

Hans Matthews, B.Sc., P.Geo.
Hearing Commissioner

Appendix 1 Summary of Costs Claimed and Awarded

	Total fees/ honoraria claimed	Total expenses/ disbursements claimed	Total GST claimed	Federal PFP reduction	Total amount claimed	Total fees/ honoraria awarded	Total expenses/ disbursements awarded	Total GST awarded	Total amount awarded	Reduction
Alberta Wilderness Association and Grassy Mountain Group (the Coalition)										
Ackroyd LLP	\$308,988.80	\$1,288.20	\$15,513.85	\$4,800.00	\$325,965.60	\$214,412.80	\$1,288.20	\$10,785.05	\$226,486.05	\$99,479.45
Dr. Jon Fennell	\$57,780.00	\$0.00	\$2,889.00	\$2,800.00	\$57,869.00	\$41,256.00	\$0.00	\$2,062.80	\$43,318.80	\$14,550.20
Allan Locke	\$42,460.00	\$0.00	\$2,160.00	\$2,900.00	\$42,460.00	\$19,440.00	\$0.00	\$972.00	\$20,412.00	\$220,48.00
Cliff Wallis	\$40,702.50	\$0.00	\$2,035.13	\$3,865.00	\$38,872.63	\$31,792.50	\$0.00	\$1,589.63	\$33,382.13	\$5,490.50
Dr. John Post	\$35,640.00	\$0.00	\$0.00	\$1,700.00	\$33,940.00	\$25,650.00	\$0.00	\$0.00	\$25,650.00	\$8,290.00
Lorne Fitch	\$28,620.00	\$0.00	\$0.00	\$3,000.00	\$25,620.00	\$15,930.00	\$0.00	\$0.00	\$15,930.00	\$9,690.00
James Farquharson	\$23,345.00	\$350.24	\$1,184.76	\$1,100.00	\$23,767.74	\$18,975.00	\$350.24	\$966.26	\$20,291.50	\$3,476.24
John Thompson	\$12,000.00	\$0.00	\$600.00	\$1,435.00	\$11,165.00	\$8,000.00	\$0.00	\$400.00	\$8,400.00	\$2,765.00
Brian Gettel	\$4,590.00	\$0.00	\$229.50	\$0.00	\$4,819.50	\$4,590.00	\$0.00	\$229.50	\$4,819.50	\$0.00
Fran Gilmar	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	\$100.00	\$0.00	\$0.00	\$100.00	\$0.00
Tyler Watmough	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Norman Watmough	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Larry Donkersgoed	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Ed Donkersgoed	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Kari Lehr	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
David Rothlin	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Rae Redekopp	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
John Redekopp	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Shirley Kirby	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Vern Emard	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Total	\$556,226.30	\$1,638.44	\$24,612.24	-\$21,600.00	\$566,579.47	\$381,346.30	\$1,638.44	\$17,005.24	\$378,389.98	\$166,589.49
Canadian Parks and Wilderness Society										
Drew Yewchuk	\$39,200.00	\$0.00	\$1,960.00	\$0.00	\$41,160.00	\$39,200.00	\$0.00	\$1,960.00	\$41,160.00	\$0.00
Marc Bowles and Sarah Dougherty	\$14,280.00	\$0.00	\$714.00	\$12,920.00	\$2,074.00	\$14,280.00	\$0.00	\$714.00	\$2,074.00	\$0.00
Martin Olszynski	\$1,840.00	\$0.00	\$92.00	\$0.00	\$1,932.00	\$1,840.00	\$0.00	\$92.00	\$1,932.00	\$0.00
Cornelis Kollijn	\$45,360.00	\$0.00	\$2,268.00	\$0.00	\$47,628.00	\$30,969.00	\$0.00	\$1,548.45	\$32,517.45	\$15,110.55
Total	\$100,680.00	\$0.00	\$5,034.00	-\$12,920.00	\$92,794.00	\$86,289.00	\$0.00	\$4,314.45	\$77,683.45	\$15,110.55

	Total fees/ honoraria claimed	Total expenses/ disbursements claimed	Total GST claimed	Federal PFP reduction	Total amount claimed	Total fees/ honoraria awarded	Total expenses/ disbursements awarded	Total GST awarded	Total amount awarded	Reduction
Livingstone Landowner Group										
McLennan Ross LLP	\$237,944.00	\$717.35	\$11,933.07	\$0.00	\$250,594.42	\$168,204.00	\$717.35	\$8,446.07	\$177,367.42	\$73,227.00
McKenna Geotechnical Inc.	\$53,375.00	\$1,371.95	\$2,733.32	\$0.00	\$57,415.70	\$40,600.00	\$1,371.95	\$2,098.60	\$44,070.55	\$13,345.15
Jim Young Atmospheric Services Inc.	\$8,862.50	\$0.00	\$1,152.13	\$0.00	\$10,014.63	\$8,862.50	\$0.00	\$443.13	\$9,305.63	\$709.00
SolAero Ltd.	\$31,920.00	\$0.00	\$1,596.00	\$0.00	\$33,516.00	\$6,384.00	\$0.00	\$319.20	\$6,703.20	\$26,812.80
Swift Creek Consulting	\$23,387.50	\$0.00	\$1,169.38	\$0.00	\$24,556.88	\$21,912.50	\$0.00	\$1,095.63	\$23,008.13	\$1,548.75
John Lawson	\$381.80	\$0.00	\$0.00	\$0.00	\$381.80	\$381.80	\$0.00	\$0.00	\$381.80	\$0.00
Bobbi Lambright	\$929.06	\$0.00	\$25.44	\$0.00	\$954.50	\$686.04	\$0.00	\$24.30	\$710.34	\$244.16
Sid Marty	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Bill Trafford	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$0.00
Total	\$357,199.86	\$2,089.30	\$18,609.34	-\$21,600.00	\$377,833.93	\$247,430.84	\$2,089.30	\$12,426.93	\$240,347.07	\$115,886.86
Timberwolf Wilderness Society										
Hayduke & Associates Ltd.	\$44,040.00	\$211.09	\$2,212.55	\$0.00	\$46,453.09	\$35,235.00	\$211.09	\$1,772.30	\$37,218.39	\$9,234.70
FWR Freshwater Research Limited	\$16,000.00	\$0.00	\$800.00	\$0.00	\$16,800.00	\$16,000.00	\$0.00	\$800.00	\$16,800.00	\$0.00
Dr. Ann-Lise Norman	\$21,250.00	\$0.00	\$0.00	\$0.00	\$21,250.00	\$5,312.50	\$0.00	\$0.00	\$5,312.50	\$15,937.50
Dr. Kabir Rasouli	\$3,043.06	\$0.00	\$0.00	\$0.00	\$3,043.00	\$757.96	\$0.00	\$0.00	\$757.96	\$2,285.10
Mike Judd	\$600.00	\$0.00	\$0.00	\$0.00	\$600.00	\$200.00	\$0.00	\$0.00	\$200.00	\$400.00
Total	\$84,933.06	\$211.09	\$3,012.55	\$0.00	\$88,146.09	\$57,505.46	\$211.09	\$2,572.30	\$60,288.85	\$27,857.30
Municipal District of Ranchland No. 66										
Carscallen LLP	\$145,052.00	\$205.38	\$7,262.87	\$0.00	\$152,520.25	\$80,131.00	\$205.38	\$4,016.82	\$84,353.20	\$68,167.05
Circle T Consulting	\$29,332.50	\$1,328.49	\$1,533.05	\$0.00	\$32,195.01	\$23,220.00	\$791.20	\$1,200.56	\$25,211.76	\$6,983.25
Cameron Gardner	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Ron Davis	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200.00
Total	\$174,784.50	\$1,533.87	\$8,795.92	\$0.00	\$185,115.26	\$103,351.00	\$996.58	\$5,217.38	\$109,564.96	\$75,550.30
Barbara Janusz										
Barbara Janusz	\$3,200.00	\$0.00	\$0.00	\$0.00	\$3,200.00	\$2,200.00	\$0.00	\$0.00	\$2,200.00	\$1,000.00
Total	\$3,200.00	\$0.00	\$0.00	\$0.00	\$3,200.00	\$2,200.00	\$0.00	\$0.00	\$2,200.00	\$1,000.00
Shuswap Indian Band										
Landmark Resource Management	\$4,980.00	\$0.00	\$249.00	\$0.00	\$5,229.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,229.00
Chief Barb Cote	\$400.00	\$0.00	\$0.00	\$0.00	\$400.00	\$400.00	\$0.00	\$0.00	\$400.00	\$0.00
Total	\$5,380.00	\$0.00	\$249.00	\$0.00	\$5,629.00	\$400.00	\$0.00	\$0.00	\$400.00	\$5,229.00

