

Appendix A.12 – Horse Lake First Nation

I – Background information

Horse Lake First Nation (Horse Lake) is part of the Athapaskan *Dane-zaa* or “Beaver” peoples, who are generally accepted to have been living in portions of northern and central Alberta from the pre-contact period until current times. The *Dane-zaa* means “those who live among the beaver”. Horse Lake states that their traditional territory is situated in present-day northwestern Alberta and northeastern British Columbia (BC). This assertion includes a portion of central Alberta from roughly Hinton to the BC border. They assert that from an ancient past they have utilized and inhabited the lands, waters and resources within this area for numerous different purposes, including hunting, fishing, trapping, and the exercise of cultural and traditional modes of life. The Horse Lake people continue to speak their traditional language, also called *Dane-zaa*.

Horse Lake (at that time, the Beaver Band at Dunvegan) adhered to Treaty Eight on July 6, 1899, and its first reserves were allotted after 1906. There was much re-arranging of reserve land allotment in subsequent years and the final arrangements were not made until 1959. They are a member of the Western Cree Tribal Council along with Duncan’s First Nation and Sturgeon Lake Cree Nation. Horse Lake is also a member of the Treaty 8 First Nations of Alberta.

Historically, the Crown has referred to Horse Lake people by various names, including the “Beaver Indians of Dunvegan”, the “Beavers of Grande Prairie”, and the “Dunvegan Band”. Currently Horse Lake holds two reserves: *Clear Hills 152C* and *Horse Lakes 152B*. Horse Lake’s registered population as of August 2016 is 1,160 with 494 living on reserve. Horse Lake has asserted in previous filings to the Crown, as an adherent to Treaty Eight, that they have Treaty and Aboriginal rights in northwestern Alberta, northeastern BC, and the historic Treaty Eight area.

II – Preliminary Strength of Claim Assessment

The Crown’s rationale for the selection of the Aboriginal groups in its Strength of Claim assessment and its understanding of the requisite depth of consultation is based on a geographic and rights-informed analysis that considers lands currently or traditionally used by Aboriginal groups for which there is a potential overlap or interaction with the Project footprint, or effects of the Project as understood in the review process.

- The Project’s right of way (RoW) alignment transects lands that are within the traditional territory asserted by Horse Lake in central Alberta from approximately Kilometer Post (KP) 210 to approximately KP 410. This portion of the RoW is at the extreme southern margin of this claimed traditional area. The Project RoW’s distance from the nearest Horse Lake community is estimated at 250 kilometers (km). The following facilities fall within the Horse Lake traditional territory claim: Edson Pump Station, Hinton Pump Station, and Jasper Pump Station;
- The Project’s RoW in central Alberta is entirely within the area of Treaty Six. No portion appears to be in Treaty Eight territory and only a very small amount of Treaty Eight lands are included in the Trans Mountain Expansion Pipeline Corridor Impact Zone (160 km). Horse Lake has established

Treaty rights within the Treaty Eight territory. The Project's footprint is outside the area where Horse Lake's Treaty rights are exercised (except in the Jasper National Park area);

- The Project's RoW alignment transects the claimed traditional territory from the Hinton area to the BC border (as shown in the map submitted for the Site C Clean Energy Project review panel process). However, no part of this alignment transects either the "area of critical interest" or the "area of economic interest" identified on that map for Horse Lake. For this reason, it is likely that the Project's corridor is located outside of Horse Lake's primary traditional use area.¹ As the Project pipeline corridor does not transect Treaty Eight area, the potential impacts on Horse Lake's Treaty rights are considered to be *negligible to low*. The initial assessment of Horse Lake's claim for any Aboriginal rights to this section of the Project's pipeline corridor is considered to be *negligible to low*; and
- It is Canada's understanding that First Nations that entered into Treaty Eight, as Horse Lake did in 1899, agreed to "... cede, release, surrender and yield up... all their rights, titles and privileges whatsoever, to the lands..." subject to Treaty Eight and that this would apply to that portion of the Project footprint in Treaty Eight.²

III – Involvement in the NEB and Crown Consultation Process

Horse Lake participated in the National Energy Board (NEB) review process as an intervenor, provided oral traditional evidence and filed information requests [A65438] with the NEB. Horse Lake did not provide oral summary argument or written final argument. Horse Lake did not respond to the Major Projects Management Office's (MPMO) Issues Tracking Table Information Request [A4Q8I6].

Horse Lake signed a contribution agreement with the NEB for \$6,800 in participant funding plus travel for two to the hearing. Horse Lake was also offered \$6,000 by MPMO to support their participation in consultations following the release of the *NEB Recommendation Report* but did not use this funding opportunity. To date, Horse Lake has had minimal engagement with the Crown consultation team.

Given the nature and location of the Project, and the potential impacts of the Project on Horse Lake's Aboriginal Interests, the federal Crown's view is that the legal duty to consult Horse Lake lies at the low end of the *Haida* consultation spectrum. Horse Lake was placed on Schedule C of the Section 11 Order issued by the EAO.

The Crown provided a first draft of this Report to Horse Lake for review and comment on August 26, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 4, 2016. The Crown has not received comments from Horse Lake.

¹ The Project RoW does not overlap the Treaty 8 area in northeast BC, nor the asserted territory of Horse Lake in northeast BC. The Project would be located approximately 230 km and 102 km south of Horse Lake's asserted traditional territory in BC, Areas A and B, respectively.

² <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853>

IV – Summary of Key Horse Lake First Nation Issues and Concerns Raised

The Crown has gained its understanding of Horse Lake’s interests and concerns through the NEB process, including information requests. This section offers a summary of the key issues raised by Horse Lake, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown’s assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown’s views and conclusions. The Crown’s understanding of Horse Lake’s key Project-related issues and concerns are summarized below:

Cultural and Social Impacts

Horse Lake raised concerns about potential impacts on cultural well-being, heritage resources, and their ability to maintain their subsistence/country-style of living. Concerns regarding the potential impact of increased access for some hunters during the construction phase were also raised.

Methodology, Process and Consultation

Horse Lake raised concerns regarding Aboriginal consultation, including whether the Crown's obligation to consult Horse Lake has been met appropriately, and whether the proponent will have meaningful engagement with Horse Lake.

Cumulative Effects

Horse Lake raised concerns regarding the cumulative effects of prior development on Horse Lake members’ health, and on the natural environment, with a particular focus on herbs, plants, animals and impacts on animal populations, fish, and water quality.

Environmental Impacts

Horse Lake noted concerns about the Project’s direct and indirect effects on water, soils, terrain, vegetation, fish, wildlife, and wildlife habitat due to the construction, operation, and abandonment of Project infrastructure and how the Project lands will be reclaimed. They have also noted potential impacts on their sources of medicinal plants, which are traditionally obtained from within the RoW by the Horse Lake people.

Impacts to Aboriginal or Treaty Rights

Horse Lake noted that the Project has the potential to impact the current and future exercise of Horse Lake’s Aboriginal and Treaty rights (Aboriginal Interests), including their hunting, fishing, trapping and harvesting/gathering activities. Horse Lake also raised concerns about being able to maintain their subsistence/country-style of living, and of the potential impact of increased access for some hunters during the construction phase.

Accidents and Malfunctions

Horse Lake raised concerns about the safety of the Project, with particular regard to the Project’s engineering specifications, and whether or not there has been an adequate assessment of alternatives to the Project.

Socio-Economic Concerns

Horse Lake requested that monitors be hired from Aboriginal communities, and that they be present during both construction and post-construction phases.

Horse Lake's Response to NEB Recommendation Report

No specific comments were received by the Crown from Horse Lake on the *NEB Recommendation Report*.

V – Potential Impacts of the Project on Horse Lake First Nation's Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Section 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted or established traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Horse Lake's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Horse Lake's ability to practice Aboriginal Interests.

Horse Lake, as an adherent to Treaty Eight, has rights to hunt, trap and fish throughout the entire Treaty area. Land use information and other evidence filed with the NEB was reviewed to understand interactions between the Project and historic Treaty First Nations' traditional use areas including for spiritual and cultural use included lands outside this Treaty area. The Crown approached consultation at the higher end of the consultation spectrum where there were clear Project interactions with the exercise of Treaty harvesting, and other traditional and cultural use rights. See Section 4 of the Report for further analysis of the potential impacts of the Project on each of the Alberta Treaty First Nations' rights and other interests.

Where information was available, the Crown considered the following:

- Biophysical effects to values linked to Aboriginal rights (e.g., fish) that were assessed by the NEB;
- Impacts on specific sites or areas identified as important to traditional use; and
- Impacts on social, cultural, spiritual, and experiential aspects of exercising Aboriginal Interests.

The Crown's conclusion on the seriousness of Project impacts on Horse Lake's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Horse Lake, Horse Lake's engagement with the proponent, proponent commitments, and recommended NEB conditions.

Horse Lake identified issues and concerns during the NEB process. The Crown understands that Horse Lake did not complete a traditional land and resource use study for the Project. As a result, the

Crown has limited information on the specific sites and resources used by Horse Lake for traditional purposes that could be impacted by the Project.

Impacts on Hunting, Trapping, and Gathering

Horse Lake raised specific concerns with potential Project impacts relating to their hunting, trapping, and plant gathering activities:

- Cumulative effects of development on the natural environment, with a particular focus on herbs, plants, animals and impacts on animal populations;
- Project's direct and indirect effects on soils, terrain, vegetation, wildlife, and wildlife habitat due to the construction, operation, and abandonment of Project infrastructure and how the Project lands will be reclaimed;
- Potential impacts to their sources of medicinal plants, which are traditionally obtained from within the RoW by the Horse Lake people;
- Potential impacts on the current and future exercise of Horse Lake's Aboriginal and Treaty rights, including their hunting, trapping and harvesting/gathering activities; and
- Ability to maintain their subsistence/country-style of living and of the potential impact of increased access for some hunters during the construction phase.

As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens and vegetation communities of concern, wetlands, and wildlife and wildlife habitat (including species at risk) listed species. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report). The proponent would implement several mitigation measures to reduce potential effects to species important for Horse Lake's hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP), and the vegetation and wildlife management plans.

Project-related construction and routine maintenance are expected to cause short-term, temporary disruptions to Horse Lake's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. Construction and reclamation activities may result in disruptions to access and a loss of harvesting opportunities for Horse Lake. The Crown understands that cumulative effects of development activities may have impacted Horse Lake's ability to exercise its hunting, trapping and gathering rights. Project-related impacts on access to, or use of culturally sensitive sites and practices are viewed as additive to the current baseline which reflects cumulative effects of past development activities.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to hunting, trapping, and gathering sites (Section 4.3.1 of this Report). The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize impediments to access of Horse Lake's traditional lands. The proponent is committed to minimizing the development of new access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Horse Lake, Horse Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Horse Lake's hunting, trapping, and plant gathering activities.

Impacts on Freshwater Fishing

Horse Lake raised specific concerns with potential Project impacts relating to their Aboriginal right to fish:

- Cumulative effects of development on the natural environment, with a particular focus on fish and water quality;
- Project's direct and indirect effects on water and fish due to the construction, operation, and abandonment of Project infrastructure and how the Project lands will be reclaimed; and
- Potential impacts on the current and future exercise of Horse Lake's Aboriginal and Treaty rights, including their fishing activities.

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and fish habitat and surface water. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Horse Lake's access to fishing activities. The Crown appreciates that if construction and reclamation occur during the fishing season there could be a potential reduction in access to waterways, staging areas, and fishing sites for Horse Lake community members.

However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites (Section 4.3.2 of this Report). As previously discussed, the proponent is committed to minimize disturbance to access to Horse Lake's traditional lands, as described in the Access Management Plan. The proponent is committed to working with Horse Lake to develop strategies to most effectively communicate the construction schedule and work areas to community members.

In consideration of the information available to the Crown from the NEB process, consultation with Horse Lake, Horse Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Horse Lake's freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Horse Lake expressed concerns about potential impacts on their cultural well-being and heritage resources.

As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes, and Project-related activities are expected to cause short-term disruptions that temporarily affect the ability of Aboriginal groups to access land, waters or resources for traditional purposes.

The Crown understands that Horse Lake's opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and that there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Horse Lake's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific sites and access to physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown notes the proponent's commitment to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Horse Lake, Horse Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Horse Lake's other traditional and cultural practices.

Impacts Associated with Accidental Pipeline Spills

Although Horse Lake did not explicitly indicate concerns about a possible spill, the Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty.

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Horse Lake's Aboriginal Interests and concerns raised by Horse Lake during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Horse Lake's Aboriginal Interests. The Crown acknowledges the

numerous factors that would influence the severity and types of effects associated with a spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill³.

VI – Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks associated with the Project. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Horse Lake's Aboriginal Interests would be negligible-to-minor.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Horse Lake's ongoing involvement and participation the proponent's detailed project planning, including the development of site-specific measures to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Horse Lake in emergency response planning activities. The federal Crown is also considering incremental measures that would further accommodate the potential adverse impacts of the Project on Horse Lake, as discussed in Sections 4 and 5 of the main body of this Report.

³ Trans Mountain Final Argument, p. 85 and 207