

## Appendix B.13 – Shackan Indian Band

### I - Background Information

Shackan Indian Band (Shackan) is part of the Nlaka’pamux (pronounced “*Ing-khla-kap-muh*”) Nation, whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. Shackan’s main community is located approximately 20 kilometres (km) east of Spences Bridge and 40 km west of Merritt. Shackan asserts that its members exercise Aboriginal rights throughout the Nlaka’pamux Nation’s territory, including hunting, fishing harvesting/medicine gathering. Shackan members historically spoke the Nlaka’pamux language. The language is actively spoken by some members of the community today. Shackan is a member of the Nicola Tribal Association which also includes: Siska Indian Band, Nicomen Indian Band, Coldwater Indian Band, Nooaitch Indian Band, Cook’s Ferry Indian Band and Upper Nicola Band.

Shackan has three reserves: Papsilqua Reserve No. 13 (295.4 hectares [ha], Shackan Reserve No. 11 (2,595.3 ha), and Soldatquo Reserve No. 12 (983 ha). As of June 2016, Shackan had a registered population of 133 members (69 are living on their Reserve; 9 members are living on other Reserves, and 55 are living off Reserves). Shackan’s reserves are located on the Nicola River, downstream from the Project.

Shackan is a party to the Nlaka’pamux Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ. The *Writ* also includes Lower Nicola Indian Band, Ashcroft Indian Band, Boothroyd Indian Band, Boston Bar First Nation, Coldwater Indian Band, Cook’s Ferry Indian Band, Kanaka Bar Indian Band, Lytton First Nation, Nicomen Indian Band, Nooaitch Indian Band, Oregon Jack Creek Band, Siska Indian Band, Skuppah Indian Band, and Spuzzum First Nation.

Shackan’s filings with the National Energy Board (NEB) state that its people have long relied on hunting and fishing for sustenance and for cultural fulfillment and that they have and continue to maintain traditional practices within their traditional territory.

Shackan and the Nlaka’pamux Nation are not participating in the BC Treaty process.

### II - Preliminary Strength of Claim Assessment

- Shackan is one of the Nlaka’pamux Nation bands. Approximately 226 km of the proposed pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka’pamux’s asserted traditional territory, as identified in Nlaka’pamux Nation protective *Writ of Summons*. The RoW does not overlap any portion of the consultation area utilized for Shackan. The RoW is approximately 33 km from the nearest Shackan community, their main residential reserve.
- The Crown’s preliminary assessment of the Nlaka’pamux Nation’s claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka’pamux territory, and there are some indications of Nlaka’pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka’pamux territory, and there is indication of an ancestral connection between the Nlaka’pamux community who moved into the north end of Nicola Lake,

intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim. The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka'pamux use<sup>1</sup>.

- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal title over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 1846<sup>2</sup>.

### **III - Involvement in the NEB and Crown Consultation Process**

Given the nature and location of the Project, and the potential impacts of the Project on Shackan's Aboriginal Interests, the Crown is of the view that the legal duty to consult Shackan lies at the middle to deeper end of the *Haida* consultation spectrum. In consideration that the Project would not intersect with Shackan's asserted traditional territory, Shackan was placed on Schedule C of the Section 11 order issued by the EAO. The consultation that was provided to Shackan is described in section III of this appendix and is consistent with the middle to deeper end of the *Haida* spectrum.

Shackan was an active intervenor in the NEB review of the Project, providing oral traditional evidence, written summary argument, and oral summary argument to the NEB. Shackan has also been actively engaged in the Crown consultation process. Shackan met with the Crown on May 4 and September 22, 2016 to discuss the Project.

Shackan signed a contribution agreement with the NEB for travel for one to the hearing. The Major Projects Management Office (MPMO) offered Shackan \$11,995 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Shackan an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Shackan signed a contribution agreement with the MPMO in response to the first of these offers, for a total of \$11,995 in allocated funding.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. The Crown did not receive comments from Shackan on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016 and Shackan submitted comments on November 18, 2016. Shackan noted that they were unable to review all of the documents in detail due to the tight timeline and lack of resources, and expressed disagreement with the Crown's assessment of Project impacts on Shackan's

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<sup>1</sup> Ministry of Justice, Aboriginal Research Division, Nlakapamux: Review of Ethnographic and Historical Sources (Revised November 20, 2013; Teit, James, "The Thompson Indians of British Columbia" in *Memoirs of the American Museum of Natural History*, Volume II, 1900.; Dawson, George M., "Notes on the Shuswap People of British Columbia" in *Transactions of the Royal Society of Canada*, Section II, 1891; Wyatt, David, "Thompson" in *Handbook of North American Indians*, Vol. 12, Washington: Smithsonian Institution, 1998.

<sup>2</sup> Ibid.

Aboriginal Interests and constitutional rights. Shackan did not provide a separate Aboriginal group submission to the Crown.

#### **IV - Summary of Key Shackan Issues and Concerns Raised**

Shackan assert Aboriginal rights and title throughout the Nlaka'pamux Nation territory (including hunting, fishing, harvesting/medicine gathering). Shackan are concerned that the Project will have an impact on land, water and sources within their traditional territory and the potential environmental and cumulative effects of ongoing industrial development. The Crown's understanding of Shackan's key Project-related issues and concerns raised during the NEB process and during the Crown consultation meetings are summarized below. This is a summary of the key issues raised by Shackan, 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.

#### **Methodology, Process, and Consultations**

Shackan have stated the NEB process is insufficient to adequately address their concerns through consultation and accommodation, and they do not consider the NEB process an appropriate forum for the Crown to use to discharge its duty to consult. Shackan also views the participant funding that was provided to participate in these processes as inadequate. Shackan is concerned with the NEB's hearing process, with its tight timelines, limited oral hearings, lack of funding and absence of cross examination of the proponent. Shackan noted that the process does not reflect the perspective of Aboriginal groups and the beliefs and culture and what the land means to Aboriginal groups. Concerns were also raised with the NEB's decision that it would not consider the environmental consequences of either the upstream production or downstream use of the oil transported by the pipeline.

Shackan expressed concerned with the proponent's statement that the Project is in the public interest and believes that the proponent has not established that the Project is needed or is in fact in the public interest. Shackan also indicated that the proponent's commitments to engagement and communication were not considered to be mitigation or accommodation of the potential impacts of the Project on their Aboriginal rights.

Shackan noted that they disagreed with EAO's determination regarding the section 11 order.

#### **Cultural and Social Impacts:**

Shackan is concerned about potential inability to practice TLU as a result of increased development in the region, loss of language and culture, and effects to social and cultural well-being in the community. Traditional practices within the territory that may be impacted by the Project include picking potatoes and wild moss, hunting, tanning hides, and fishing. The decline of medicinal and traditional food plants as a result of climate change, and potential Project effects on traditional plants including huckleberry and blueberry were raised as concerns. Shackan say that the Project going around existing reserves (i.e., Coldwater, Lower Nicola) will lead to further infringement on First Nations' shared title and rights.

Shackan is concerned that Project-related access restrictions will prevent Shackan community members from accessing preferred sites, and they are particularly concerned about traditional use areas in the Coquihalla Valley and Coldwater. Shackan noted concerns about linear disturbances increasing access to non-Aboriginal recreational hunters and increased predation, resulting in fewer hunting opportunities for Aboriginal hunters. Shackan is also concerned about recreational users, particularly in the Coldwater

River (Coquihalla Region) disturbing the land and water (salmon hatchlings) with quads and snowmobiles.

Shackan stated that there are known sacred sites along the Project RoW, and that there is concern for cultural values and beliefs including the little people and Sasquatch who were not put on the Reserve and who could be negatively impacted by the Project. Shackan are concerned about cultural survival issues, including potential adverse effects to traditional, cultural, social areas, of which they have identified up to 33 areas on the existing or proposed RoW. Shackan note potential adverse effects could be permanent and that these sites are not replaceable and site cannot be moved.

#### Environmental Impacts

Shackan is concerned that the Project will have an impact on land, water and resources within their traditional territory. Shackan noted the Lower Nicola River watershed as an interconnected ecosystem that relies heavily on the health of its lakes and rivers for the continued vitality of fish, plants, animals, as well as the continuity of Shackan culture. Species diversity (among deer, fish, plants, fungi) within the watershed was identified as important for medicine, food, intergenerational knowledge transfer, and the health of the ecosystem. Concerns were raised related to Project effects to water quality and quantity, and natural springs in the region, particularly the underground aquifer that runs parallel to the Coldwater River, and the protection of drinking water in the Merritt aquifer.

Shackan is concerned about the creation of animal corridors, impacts on coho salmon and habitat in the Coldwater River and species at risk (including great horned owl, American badger, Lewis's woodpecker, and Williamson's sapsucker), and wildlife displacement and habitat fragmentation. Knapweed, an invasive vegetation species that is growing on the existing right-of-way is also of concern to Shackan.

#### Cumulative Effects

Cumulative effects raised by Shackan include existing and proposed transmission line projects, extensive road networks from forestry, mining and mineral exploration activities, pipelines, highways, railways, and agriculture land reserves, which limit Shackan's ability to use the land base for traditional pursuits and subsistence activities, and maintain their culture. Shackan raised concerns about impacts of these developments, including increased non-Aboriginal access to areas, wildlife habitat fragmentation, degradation of fish habitat, and other changes to the ecosystem. Shackan also raised concerns about the effects of snowmobiles and quads on traditional activities.

#### Health and Human Safety Impacts

Shackan raised concerns about the stress on community infrastructure, and that there are not enough police, doctors, healthcare practitioners, or social workers to manage a Project-associated population influx, and forecasted a possible increase in traffic, hitch-hikers on the Coldwater Road, and impacts on women and children as a result of an influx of workers.

#### Economic Impacts

Shackan raised concerns about employment and training and business opportunities.

#### Accidents and Malfunctions (marine/terrestrial)

Shackan is concerned about oil spills and leaks and the effects it will have on the environment including fish, wildlife, birds, water and air. In particular, they are concerned that a release of contaminants from the pipeline could have catastrophic effects on the lakes and rivers and connected ecosystems that are so critical to the exercise of Shackan's Aboriginal rights and the preservation of Shackan's culture.

Shackan also raised questions whether the proponent had underestimated the costs of a spill clean-up. In particular, Shackan is concerned about the likelihood of an oil spill in marine areas including: clean up, response timing, insurance, consequences on fisheries, and compensation if fish that return to the territory are affected by a spill.

#### Impacts on Aboriginal Rights and Title

Shackan is concerned about infringement on rights and title in their traditional territory and express that they believe government has slowly been taking away those rights one project at a time in their territory. Spills on land are also of concern to Shackan, as they stated that contamination diminishes the value of the Nlaka'pamux Nation's Aboriginal title.

Shackan noted the importance of a healthy environment for community members to practice rights-based harvesting, transfer of inter-generational knowledge, enable cultural heritage and continuity and traditional livelihoods, and access clean water.

The Crown is in receipt of an open letter sent to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal groups, including Shackan. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

#### **Accommodation Proposals**

Shackan provided the federal and provincial crown with proposed accommodation measures to consider in relation to accommodating potential impacts of the Project on Shackan's Aboriginal Interests:

- Shackan identified interest in receiving compensation for the past and ongoing infringement of the existing Trans Mountain Pipeline, and in discussing resource revenue sharing for the proposed Project;
- Shackan is interested in receiving more clarity on how the Crown intends to justify infringement of its s. 35 protected Aboriginal rights;
- Shackan is interested in a regional cumulative effects study;
- As stated in the proponent's Aboriginal Engagement Report (July 2016), Shackan requested the following:
  - The proponent to provide quantitative, measurable targets for Aboriginal employment, training and business opportunities;
  - That Shackan be consulted by the proponent on any increase or limitation of access;
  - Ongoing Aboriginal participation in construction monitoring of the pipeline on a regular basis, from pre-construction through the life of the Project, and the cost of this monitoring should be funded by the proponent; and
  - In order to fulfil this duty, the Crown must provide an appropriate process in which the Shackan has a reasonable opportunity to assess the potential effects of the Project and to provide feedback that is well reasoned and capable of contributing meaningfully to the government's decision.

Sections 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by Shackan that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighing Project costs and benefits with the impacts on Aboriginal Interests.

### ***Shackan's Response to NEB Recommendation Report***

No specific comments were received on the *NEB Recommendation Report*.

#### **V - Potential Impacts of the Project on Shackan's Aboriginal Interests**

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests are provided in Sections 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted 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 Shackan's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Shackan's ability to practice Aboriginal 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.

Additional factors considered in the assessment of impacts on Aboriginal Interests are described in Section 2.4.3 of this Report. The Crown's conclusion on the seriousness of Project impacts on Shackan's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Shackan, Shackan's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province.

The Nicola Tribal Association led a joint third-party traditional land use/traditional ecological knowledge (TLRU) study with Shackan Indian Band, Nicomen Indian Band, and Nooaitch Indian Band. The study, titled *Final Report: Tmix<sup>W</sup> Research Traditional Land Use/Traditional Knowledge Study* was provided to the proponent in September 2014. The Interim Report *Tmix<sup>W</sup> Research Traditional Land Use/Traditional Knowledge Study*, was summarized in a Supplemental Technical Report submitted to the NEB by the proponent on July 21, 2014 (Filing IDs A3Z4Z2 to A3Z4Z5). The study identifies traditional land uses in the segment of the proposed pipeline from Black Pines to Hope. Traditional land uses identified by Nicola Tribal Association include hunting mammals and birds, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members and trails travelways. None of the Aboriginal Interests identified by Nicola Tribal Association in their TLRU study, including fishing, hunting, trapping and gathering activities, habitation, trails and sacred sites, overlap with the proposed pipeline corridor. In its Supplemental Technical Report ([A4F5D1](#)), the proponent estimated approximate distances and directions from the pipeline corridor based on information in Nicola Tribal Association's report. Shackan also completed an additional independent, third-party Aboriginal Interests and Mitigation Report (AIMR) in December 2014. The report summarizes information on Shackan's traditional knowledge, values, and potential impacts and mitigation related to the Project. In its Supplemental Technical Report ([A4H1X0](#)), the proponent estimated approximate distances and directions from the pipeline corridor based on information in the AIMR.

In July 2016, Shackan completed a study titled: *Shackan Indian Band Knowledge and Use Study for the proposed Kinder Morgan Trans Mountain Expansion Project*, of which a Summary Report (the Knowledge and Use Study Summary Report) was provided to the Crown consultation team in November 2016. The

Summary Report included non-confidential baseline information and analysis of anticipated Project interactions in Nlaka'pamux's asserted traditional territory. Shackan noted that the study was conducted within the constraints of available time and budget, and should not be a replacement for other Project-specific studies. A total of 658 site-specific use values were recorded, with key themes such as impacts on water (including the Nicola River) and fishing, hunting, gathering plants and fungi, and cultural heritage and continuity.

### ***Impacts on Hunting, Trapping and Plant Gathering***

As summarized in their TLRU, mammals hunted in the Project Area include bear, beaver, big horn sheep, elk, groundhog, moose, mountain goat, mule deer, muskrat, rabbit, squirrel and white-tailed deer. Birds hunted in the Project Area include blue grouse, chukar partridge, duck, fool hen, geese, pheasant, prairie chicken, spruce grouse and willow grouse. Shackan also collects eggs from migrating birds. In their TLRU study for the Project, Nicola Tribal Association identified 67 plants that are gathered, including: alder, asparagus, bitter root, blueberries, buffalo sage, bull rush, cactus, cow parsnip, dandelion, devil's club, fern, Douglas fir, false box, green willow, hawthorn, horsetail, huckleberry, Indian celery, Indian hemp, Indian tea, Jackpine moss, juniper, kinnikinnick, larch, lodgepole, pine, mint, mullen, penstemon, pineapple weed, Ponderosa pine, raspberry, red willow, rose, soapberry, showy milkweed, silver willow, stinging nettle, sagebrush, strawberry, sunflower, tamarack, tiger lily, trembling aspen, cattail, water hemlock, watercress, western cedar, wild onion, wild potato, wolf willow, yarrow, and yellow cedar. Historically, roots and bulbs were an important part of the diet, partly because the availability of root crops was reliable. Plants, roots and fibre were made into tools, bows and arrows, spears, and nets and harpoons.

Shackan identified several concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts on land within their traditional territory, creation of animal corridors, species at risk (including great horned owl, American badger, Lewis's woodpecker, and Williamson's sapsucker), wildlife displacement and habitat fragmentation, declining medicinal and traditional food plants (e.g., huckleberry and blueberry), and knapweed. 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, old growth forests, 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). With regards to specific concerns raised by Shackan, the proponent would implement several mitigation measures to reduce potential effects to species important for Shackan'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. The proponent is committed to the development of mitigation plans for each identified wildlife species at risk whose draft, candidate, proposed or final critical habitat is directly or indirectly affected by the Project, which will incorporate Aboriginal input and will be filed with the NEB in fulfilment of NEB Conditions. The proponent is also committed to meeting with Shackan to discuss the Shackan TLU study prior to construction.

In their TLRU study for the Project, Nicola Tribal Association did not identify hunting or trapping sites. One plant gathering site was identified in the Coquihalla and Coldwater areas; however the approximate distance from the Project Area was not stated in the TLRU study. No hunting, trapping or plant gathering sites were identified in the proposed pipeline corridor. During the AIMR for the Project, Shackan identified two hunting sites, no trapping sites and two plant gathering sites. The hunting sites are located more than 29 km from the proposed pipeline corridor and the site-specific locations and use of plants are confidential. No hunting, trapping, or plant gathering sites were identified in the proposed pipeline corridor. The Knowledge and Use Study Summary Report identified 82 hunting values within 25 km of the Project, of which 32 are within 5 km and 13 are located within the Project Area; and 200 plant gathering and fungi values are within 25 km of the Project, of which 95 are within 5 km and 48 are located within the Project Area. Mushroom gathering was identified on the north side of the Nicola River to the west of the proposed RoW, and berry picking was identified along the Coldwater road, south to Kingsvale Station. The south side of Nicola Lake was noted for gathering roots and berries, while the northwest side of the lake was historically used for hunting deer, and is still frequented by mule deer. Coquihalla Lakes is used extensively by Shackan community members to gather plants (e.g., mushrooms, berries, and indian tea) and hunting.

Shackan raised concerns with the Project's potential impacts relating to specific locations and access on hunting, trapping, and plant gathering activities, including reduced access to preferred sites, particularly traditional use areas in the Coquihalla Valley and Coldwater, and increased access to non-Aboriginal recreational hunters resulting in fewer hunting opportunities for Aboriginal hunters. Project-related construction and routine maintenance is expected to cause short-term, temporary access disruptions to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. Access disruptions from construction and reclamation activities may result in a loss of harvesting opportunities within the Project footprint. 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).

With regards to specific concerns raised by Shackan, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites, such as management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs that monitor access control measures. 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 access disturbance. The proponent is committed to minimizing the development of access routes, controlling public access along the construction right-of-way, 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 will work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Shackan prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Shackan to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Shackan expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including traditional practices within the territory that may be impacted by the Project include picking potatoes and wild moss, hunting, and tanning hides, and loss of culture, and effects to social and cultural well-being in the

community. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions within the footprint of the Project. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities (section 4.3.1 of this Report). The proponent has also committed 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 Shackan, Shackan's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Shackan's hunting, trapping, and plant gathering activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to cause low to moderate magnitude environmental effects on species associated with hunting, trapping, and plant gathering activities;
- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Shackan's community members accessing traditional hunting, trapping and plant gathering sites that are not within the Project footprint;
- Concerns identified by Shackan regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities; and
- The Project would not intersect with Shackan's asserted traditional territory.

### ***Impacts on Freshwater Fishing***

As summarized in the AIMR for the Project, Shackan community members highly value water in their traditional territory, as it provides subsistence in the form of fish and waterfowl. Fished species such as Chinook salmon, chum salmon, Coho salmon, Dolly Varden, Kokanee salmon, ling cod, silver trout, rainbow trout, sockeye salmon, spring salmon, steelhead, sturgeon, sucker and white fish.

Shackan identified many concerns related to environmental effects of the Project on freshwater fishing activities, impacts on water quality and quantity, and in particular, impacts on coho salmon and habitat in the Coldwater River. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate environmental effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats.

With regards to specific concerns raised by Shackan, the proponent would implement several mitigation measures to reduce potential effects to species important for Shackan's fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat.

During the AIMR for the Project, Shackan identified 25 fishing sites, none of which are located in the proposed pipeline corridor. Shackan community members identified two fishing sites, sockeye fishing in the Nicola River and salmon fishing in the Thompson River, crossed by the proposed pipeline corridor. One fishing site in Brook Creek is approximately 582 m east of the Project pipeline, and 22 fishing sites are located more than 6.4 km from the Project. In their TLRU study for the Project, Nicola Tribal Association identified three fishing sites more than 2 km from the Project Area or the approximate distance from the Project Area was not stated in the study. As summarized in the Knowledge and Use Study Summary Report, key sites of use identified include the Coquihalla Lakes and Nicola Lake, which is connected to other high use areas including Douglas Lake, Stump Lake, Nicola River, the Coldwater River and the Thompson River. Nicola Lake is considered by Shackan to be a key source of fresh fish, particularly in winter months, and Coquihalla Lakes are used extensively by community members for fishing. The Knowledge and Use Study Summary Report identified 110 fishing and water values within 25 km of the Project, of which 55 are within 5 km, and four are located within the Project Area.

Shackan raised concerns with the Project's potential impacts relating to specific locations and access to freshwater fishing activities, specifically reduced access will prevent Shackan community members from accessing preferred sites, traditional use areas in the Coquihalla Valley and Coldwater Valley in particular. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to fishing activities, which 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). With regards to specific concerns raised by Shackan, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Shackan's fishing activities. As previously discussed, the proponent is committed to minimize access disturbance, as described in the Access Management Plan. The proponent is committed to working with Shackan to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Shackan expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its freshwater fishing activities, including their inability to practice TLU as a result of increased development in the region, loss of language and culture, and effects to social and cultural well-being in the community. As described previously, Project construction and routine maintenance is expected to cause short-term, temporary disruptions confined to the Project footprint. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on social, cultural, spiritual or experiential aspects of fishing activities (section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Shackan, Shackan's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Shackan's freshwater fishing activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to cause low to moderate magnitude environmental effects on fish and fish habitat;

- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Shackan’s community members accessing traditional fishing sites that are not within the Project footprint;
- Concerns identified by Shackan regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities; and
- The Project would not intersect with Shackan’s asserted traditional territory.

***Impacts on Other Traditional and Cultural Practices***

Trails and travelways used for transportation, primarily within the Coquihalla and Styoma areas, and habitation sites have cultural and spiritual value to Shackan community members. Community members have stated that all the major roads and highways in their territory were originally traditional trails and travelways, and were used to access gathering sites. Shackan identified a large area of historical and cultural importance on the east side of Merritt, and ceremonial and teaching places to the east and west of Merritt. Teaching areas and cultural experiences are important for knowledge transmission, in particular for Shackan youth.

Shackan identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including the presence of known sacred sites along the Project RoW. As described in section 4.3.4 of this 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. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (section 4.3.4). With regards to specific concerns raised by Shackan, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources. The proponent has committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during right-of-way finalisation, narrowing the right-of-way in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

During the TLRU study for the Project, Nicola Tribal Association identified a total of four trails and travelways, none of which are within the proposed pipeline corridor. One trail/travelway from Coquihalla Lake to Boston Bar Creek is within 2 km of the Project Area, while the remaining three sites identified by Nicola Tribal Association are more than 2 km away from the Project Area or the approximate distance from the Project Area was not stated in the TLRU study. During the AIMR for the Project, Shackan did not identify any specific trails and travelways, or habitation sites. Two gathering places were identified more than 29 km from the Project’s pipeline corridor. Two sacred areas were identified at the headwaters of the Coquihalla River and Pemanis River, approximately 717 m east and 47 km west of the proposed pipeline corridor, respectively. The Knowledge and Use Study Summary Report identified 266 cultural heritage and continuity values within 25 km of the Project, of which 119 values are within 5 km and 53 values are located within the Project Area. As stated in the Knowledge and Use Study Summary Report, 45% of the values recorded in the Project footprint were associated with cultural heritage and continuity values. Nicola Lake has places of spiritual importance and heritage (e.g., pictographs, pit houses, and traditional legends), and teaching. Coquihalla Lakes is used by Shackan community members to practice cultural traditions.

Shackan raised concerns with the Project’s potential impacts relating to specific locations and access to other cultural and traditional practices, including cumulative effects due to the accumulation of power

lines and transportation corridors which limit Shackan's ability to use the land base for traditional pursuits, and the effects non-Aboriginal recreational users on traditional activities. As described in section 4.3.4 of this Report, 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. These disruptions 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.

Shackan expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including their inability to practice TLU as a result of increased development in the region, loss of language and culture, effects to social and cultural well-being in the community, and concern for cultural values and beliefs including the little people and Sasquatch who were not put on reserves.

In consideration of the information available to the Crown from the NEB process, consultation with Shackan, Shackan's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Shackan's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- 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;
- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Shackan's community members accessing traditional and cultural sites that are not within the Project footprint;
- Concerns identified by Shackan regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices; and
- The Project would not intersect with Shackan's asserted traditional territory.

#### ***Impacts Associated with Accidental Spills***

Shackan expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly oil spills and leaks and the effects it will have on the environment including fish, wildlife, birds, water and air, and the likelihood of an oil spill in marine areas including clean up, response timing, insurance, consequences on fisheries, and compensation if fish that return to the territory are affected by a spill.

The Crown also acknowledges Shackan's concerns regarding spills, and the potential for a spill to impact Shackan's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Shackan has for its territory.

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 Shackan's Aboriginal Interests and concerns raised by Shackan during the NEB process and

Crown consultation process, a pipeline spill associated with the Project could result in negligible to moderate impacts on Shackan'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 spill<sup>3</sup>.

## **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. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Shackan's Aboriginal Interests would be up to minor.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Shackan'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 Shackan 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 Shackan, as discussed in Sections 4 and 5 of the main body of this Report.

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<sup>3</sup> Trans Mountain Final Argument, p. 85 and 207