

## Appendix B.15 – Adams Lake Indian Band

### I - Background Information

Adams Lake Indian Band (Adams Lake) or Sexqeltqín is part of the Secwe'pemc (pronounced "Shi-HUEP-muh" or "She-KWE-pem") or Shuswap Nation.

Adams Lake has seven reserves on Shuswap Lake, Adams Lake and along the South Thompson River: Hustalen Reserve no. 1 (881.4 hectares [ha]), Squaam Reserve no. 2 (32.4 ha), Toops Reserve no. 3 (10.1 ha), Sahhalkum Reserve no. 4 (1,432.6 ha), Stequmwhulpa Reserve no. 5 (101 ha), Switsemalph Reserve no. 6 (319.7 ha), and Switsemalph Reserve no. 7 (131.6 ha). Adams Lake's total registered population is 795 (363 community members are living on Adams Lake's reserves, 59 are living on other reserves, and 373 are living off-reserve).

Adams Lake is a party to the Secwe'pemc Nation *Writ of Summons*, which was filed in the British Columbia (BC) Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ. The Secwe'pemc Nation *Writ of Summons* involves: Adams Lake Indian Band, Bonaparte Indian Band, High Bar First Nation, Kamloops Indian Band, Neskonlith Indian Band, Skeetchestn Indian Band, Spallumcheen Indian Band, and Whispering Pines/Clinton Indian Band.

The Project would see approximately 75 kilometres (km) of new right of way (RoW) constructed through the area identified in the Secwe'pemc Nation *Writ of Summons*.

There is ethno-historical information that suggests within the Secwe'pemc, there was a notion of traditional territories among different Secwe'pemc communities/divisions, territories that were subject to the stewardship and control of those communities/divisions. Adams Lake is understood to correspond with the historical Shuswap Lakes Division, along with other groups living on the South Thompson River, the Shuswap Lakes, and in the Spallumcheen area. Adams Lake signed a Forestry Consultation and Revenue Sharing Agreement with the Province of British Columbia in March 2012. However, a map included in this agreement [entitled "Map of Adams Lake Indian Band Area of Aboriginal Interest"] was crossed out in the agreement and labelled "incorrect".<sup>1</sup> Adams Lake subsequently provided a map of its asserted traditional territory to the Province in November 2012.

Historically the Secwe'pemc people spoke the Secwepemctsin language, which is part of the Interior Salish language group. It has been estimated that amongst the Secwe'pemc, 2% are fluent speakers, 12% have some ability with the language, and 11.5% are learners.

---

<sup>1</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/frcsa\\_adams\\_lake.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/frcsa_adams_lake.pdf)

## II - Preliminary Strength of Claim Assessment

- Approximately 175 km of the proposed pipeline and five pipeline facilities (Blue River Station, Finn Station, Darfield Station, McMurphy Station, and Black Pines Station) would be located within Adams Lake's asserted traditional territory. The distance from the nearest Adams Lake community to the RoW is approximately 29 km.
- The Crown understands that Adams Lake has an ancestral connection to the historical Shuswap Lakes Division. The Crown's preliminary assessment of the historical Shuswap Lakes Division's claims for Aboriginal rights, applies over the section of the Project that spans the area from north of Blue River along the North Thompson River to Kamloops, and south to Stump Lake, which overlaps with their asserted territories. That claim is assessed as a *weak prima facie* claim for Aboriginal rights as this area falls outside of the area ethnographers attribute to the historical Shuswap Lakes Division of Secwepemc, and there are no historical indications for Shuswap Lakes Division hunting, fishing, and gathering in this area around the time of contact<sup>2</sup>.
- The Crown's preliminary assessment of the historical Shuswap Lakes Division's claims for Aboriginal Title applies over the section of the Project that spans the area from north of Blue River along the North Thompson River to Kamloops, and south to Stump Lake. The claim is assessed as a *weak prima facie* claim for Aboriginal Title as this area is outside of the area ethnographers historically attribute to the Shuswap Lakes Division and there are limited indications of historic Shuswap Lakes Division uses at 1846<sup>3</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 Adams Lake's Aboriginal Interests, the Crown is of the view that the legal duty to consult Adams Lake lies at the middle portion of the *Haida* consultation spectrum. Adams Lake was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Adams Lake opportunities to be consulted at a deeper level.

Adams Lake was an intervenor in the National Energy Board (NEB) process and provided correspondence, information requests, oral traditional evidence, and written evidence. Adams Lake

---

<sup>2</sup> Ministry of Justice, Aboriginal Research Division, Secwepemc Nation: A Brief Ethnohistoric Overview of the Eastern Divisions (Revised August 2012); Ministry of Justice, Aboriginal Research Division Harper Creek Mine: Review of Ethnographic and Historical Sources (Revised June 2012); Sun Peaks Resort: A Review of the Historical and Ethnographic Sources Relating to Aboriginal Use and Occupation (Updated July 2011); Teit, James, The Shuswap, in Franz Boas ed., The Jesup North Pacific Expedition, Volume II, Ethnology and Archaeology of Southern British Columbia and Washington, New York: American Museum of Natural History, 1908; Dawson, George M., Notes on the Shuswap People of British Columbia, Transactions of the Royal Society of Canada, 1891; Palmer, Gary B., Cultural Ecology in the Canadian Plateau: Pre-Contact to the Early Contact Period in the Territory of the Southern Shuswap Indians of British Columbia, in Northwest Anthropological Research Notes, Vol. 9 No. 2, Fall 1975; Ignace, Marianne Boelscher, Shuswap in Deward E. Walker, Jr. ed., Handbook of North American Indians, Vol. 12, Washington: Smithsonian Institution, 1998; and, Ignace, Marianne and Ron Ignace, The Secwepemc: Traditional Resource Use and Rights to Land in Bruce Morrison and C. Roderick Wilson eds., Native Peoples, The Canadian Experience, Don Mills: Oxford University Press, 2004.

<sup>3</sup> Ibid.

submitted written filings [Exhibits C198] including Oral Traditional Evidence [A64357 v.15], information requests [C198-02/04/06/10/11], and other documents with the NEB describing Adams Lake's asserted Aboriginal rights, customary law, governance objectives and the preservation of Aboriginal Title within its asserted traditional territory. Adams Lake responded to the Crown's Issues Tracking Table information request by further elaborating their concerns [A71220]. Adams Lake also provided a written final argument to the NEB Panel.

Adams Lake signed a contribution agreement with the NEB for travel for one to the hearing. The Major Projects Management Office (MPMO) offered Adams Lake \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Adams Lake an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Adams Lake signed contribution agreements with the MPMO in response to both of these offers, for a total of \$26,000 in allocated funding. EAO provided Adams Lake with \$5,000 in capacity funding to support participation in consultation with the Crown on July 26, 2016.

Adams Lake met with the Crown on July 23, 2014, and October 14, 2016.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. No comments were received from Adams Lake on the draft Report. A second draft of this Report was provided to Aboriginal Groups on November 1, 2016, and Adams Lake provided comments on November 16, 2016. Comments included disagreement with the Crown's preliminary strength of claim assessment, and failure to inform itself as to the potential impact of the Project of Adams Lake's Aboriginal Interests.

#### **IV - Summary of Key Adams Lake Issues and Concerns Raised**

The Crown has gained its understanding of Adams Lake's issues and concerns through the community's involvement in the NEB process, including submissions made through the NEB hearings process, the responses Adams Lake provided to the Crown on its Information Request (IR) addressed to them, and through other engagement with the Crown, including meetings. The Crown's understanding of Adams Lake's key Project-related issues and concerns are summarized in the sections below. This is a summary of the key issues raised by Adams 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.

##### *Cultural and Social Impacts*

Adams Lake stated in its response to the Natural Resources Canada information request that it is "...concerned about loss of opportunity to exercise its rights on its lands. The extent of Adams Lake's concerns include (but are not limited to): loss of language, loss of culture, and loss of economic opportunities" (A71220). Adams Lake noted strong concerns about the impact of a spill on their Aboriginal Interests. This was framed in particular on the food fishery (based on potential contamination by a spill) as it is an important food source and the community's culture is shaped by

their interaction with the salmon. Adams Lake states they are the Secwe'pemc Nation's steward of this salmon fishery and a spill would not only affect Adams Lake's traditional land and resource utilization but have consequence throughout Secwe'pemc territory. Adams Lake is concerned about potential impacts from the Project on their traditional way of life, including an erosion of culture and impacts to their oral traditions and knowledge. Adams Lake has stated that the proponent has not appropriately responded to its concerns in these areas.

#### Methodology, Process and Consultation

Adams Lake has both procedural and substantive concerns regarding consultation and communicated that they do not think the Crown adequately understands their key issues. They have indicated that as a result of a lack of information and capacity, including inadequate funding from both the proponent and the Crown, they have been unable to adequately participate in the regulatory review process, properly review the Project and engage in meaningful consultation. Other specific concerns include: the design and implementation of the regulatory and environmental review process; the lack of consultation on the development of the NEB review process; the lack of any input into proponent application development; the inability to cross-examine witnesses; the exclusion of climate change from the Project assessment and NEB conditions; the exclusion of recommended conditions in the *NEB Recommendation Report* specific to salmon; and, the alleged weakness of the proponent's information, including lack of baseline information. Adams Lake noted they did not receive funding to conduct a Traditional Land Use Study. Adams Lake also indicated that the hearing process cannot be relied upon to discharge the Crown's duty to consult as it does not constitute meaningful consultation and expressed concerns about how their issues have been captured by the Crown in its Issues Tracking Table, suggesting the Crown's understanding does not accurately characterize Adams Lake's oral history testimony.

The NEB Panel acknowledged Adams Lake's concerns regarding engagement and capacity funding, noting their specific concerns regarding Adams Lake's interactions with the proponent which they described as being "...impersonal, inaccurate and lacking sincerity..."<sup>4</sup>. In their findings, the NEB Panel found that the proponent met the consultation requirement as outlined in the Board's Filing Manual.

Adams Lake stated that the Crown has a duty to consult before the Governor-in-Council makes any decision, and the Crown cannot decide the matter without knowing how the Project may adversely impact Aboriginal rights. Adams Lake considers consultation, including proposed terms and conditions and accommodation, only to be meaningful if it takes places in advance of a decision, rather than during later operational decisions.

Adams Lake requests that the GIC dismiss the Project application at this time because of the lack of meaningful consultation and inadequate NEB conditions that are insufficient to address Adams Lake concerns about the impact of the Project on their Aboriginal rights and title. Alternatively, Adams Lake

---

<sup>4</sup> National Energy Board Report. Trans Mountain Expansion Project. May 2016. pp. 34 – 35.

requests that the Governor-in-Council (GIC) order the NEB to reconsider and revise its terms and conditions after it has engaged in meaningful consultation with Adams Lake.

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

#### Cumulative Effects

Adams Lake expressed concerns that resource extraction activities, industrial activities, and commercial and residential development throughout Adams Lake's asserted traditional territory made it difficult for Adams Lake to exercise Aboriginal rights and carry out traditional activities. They also expressed concern regarding the effects of climate change in conjunction with other stressors on salmon populations. Adams Lake would like to have capacity provided so that they can conduct a cumulative effects assessment.

#### Fish and Fish Habitat

Adams Lake indicated that potential Project effects on salmon were one of their main areas of concern, as salmon is a staple food for the Adams Lake community. It was noted that this year's returns of sockeye salmon were low in the Adams River and Eagle River. They stated that this was due to the effects of climate change and any further stresses as a result of this Project could have permanent impacts to salmon populations. Salmon, in particular Adams River Sockeye Salmon, forms a central part of their social, cultural, and economic foundation. They also expressed concerns regarding access to fishing areas and communicated historic issues with maintaining their Aboriginal right to fish due to fisheries closures. There were numerous concerns raised regarding potential Project effects on fish and fish habitat which could impact Adams Lake right to fish. This includes impacts to water, increased non-Aboriginal access, impacts from a spill and inadequate spill response, impacts from dredging in the marine environment, and cumulative impacts from this Project and other activities in the area.

Adams Lake has raised numerous concerns regarding potential impacts to fish and fish habitat, framed within the issue of having sustainable salmon runs. These concerns include:

- Potential effects on salmon from spills, including the risk of increased tanker traffic in the marine environment;
- Increased access by non-Aboriginal anglers and effects on fish populations including the risk of overharvesting;
- Potential effects from climate change in conjunction with other stressors, including possible effects to instream flows;
- Potential effects of acid rock drainage;
- Inadequate information provided on dredging and its effects on marine and estuarine environment; and

- Potential effects of the Project on the North Thompson River that, drains into the South Thompson and Fraser Rivers and then to the ocean.

Adams Lake commented that information necessary for consultation is lacking and that the terms and conditions as they presently stand do not adequately address their paramount concern about the welfare of the salmon, which is a cornerstone of their way of life.

#### Environmental Impacts

Several other concerns regarding environmental impacts were raised by Adams Lake, including:

- Proposed wetland reclamation methods may be unsuccessful;
- Possible habitat and wildlife loss as a result of construction and operational activities;
- Concerns regarding the success of proposed mitigation and monitoring programs;
- Concerns regarding the effectiveness of *Species at Risk Act* implementation;
- Risk of aquifer and surface water contamination;
- Potential effects to vegetation from off-highway vehicles accessing stream crossing locations for maintenance and operation; and
- Cumulative effects on grizzly bear mortality risk.

Adams Lake raised concerns about the impact of adverse weather conditions (e.g., torrential rains) on the proposed pipeline, particularly if a rainfall event occurred near the North Thompson Drainage.

#### Health and Human Safety

Adams Lake noted its concerns that the Project could affect the water in their territory, including both surface water and aquifers. This concern focused on the necessity for clean water to sustain healthy fish, and effects to the health of communities if there are impacts to salmon populations on which the community relies.

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

Adams Lake identified an increase in tanker traffic and an increased chance of spills as significant concern. Adams Lake has raised concerns about potential delays in responding to spills or other environmental risks at remote water crossings and indicated that flooding could increase the risk of a spill from the pipeline. They noted the challenges that may be associated with responding to a spill in remote locations or spills on ice. They also noted that the old pipeline is leaking and recommended that it be replaced. They had concern about the potential impacts to Kamloops Lake, and salmon rearing habitat in Adams and Quesnel Lakes should a spill occur and the possible long-term effects on salmon populations. They also expressed concern for spills in the marine environment and how this would impact fish and fish habitat. There was concern that the proponent's consideration of the effects of a spill did not adequately account for a spill into a large watercourse.

### Access Management

Adams Lake is concerned that access to the South Thompson River may be restricted due to industry and Fishery Officers prohibiting community member from the area. In addition, Adams Lake is concerned that the Project will cause further land alienation. They are also concerned about increased access by non-Aboriginal anglers in their traditional territory.

### Impacts on Aboriginal rights and Title Interests

Adams Lake is concerned about the loss of opportunity to exercise its rights on its lands, loss of language, culture, and economic opportunities. It is the view of Adams Lake that the Project could impact their ability to carry out their Aboriginal rights on their traditional lands. It was noted specifically, that the transportation of bitumen through their traditional territory in proximity to fish bearing waterways presents a significant risk of adverse effects to Adams Lake's rights and title. Adams Lake has indicated that they want 'informed consent' with respect to the Project and to better understand the potential benefits and impacts. They have indicated that given their strong strength of claim to areas that would be impacted by the Project and the lack of Crown consultation and accommodation to date, the Project should not be approved until appropriate consultation accommodation, and compensation is conducted and Adams Lake consent is obtained.

### Proposed Mitigation and Accommodation

Adams Lake proposed several recommendations related to identifying further possible Project effects and consultation, engagement, accommodation, and compensation regarding the Project<sup>5</sup>. They also proposed the following Project specific measures:

- The proponent staff and/or contractors be required to park off highway vehicles 50 metres (m) from either stream bank's edge and walk into sites to minimize effects of stream crossing construction;
- The proponent collect sufficient baseline data to assess effects of the Project on Adams Lake sockeye salmon;
- Project approval be contingent upon a revised flood frequency estimates to ensure pipeline and water course crossing safety;
- The proponent recalculates the cumulative effects of instream disturbance;
- Adams Lake to utilize Federal, Provincial and proponent science to study cumulative effects of the Project;
- Funding to study extreme weather events and the impacts of these events on pipeline safety;
- Further studies on the interaction between bitumen and the quick moving Thompson River;
- Additional modeling to be conducted relating to spill response time; and
- A Terrestrial Spill Response Regime, which includes spill response resources, be established locally in order to minimize response times.

---

<sup>5</sup> Trans Mountain Pipeline ULC Aboriginal Engagement Report. Trans Mountain Expansion Project July 2016. pp. 2-3 – 2-4, 2-7, 2-11.

Section 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 Adams Lake 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.

### ***Adams Lake's Response to NEB Recommendation Report***

Adams Lake expressed concern with the NEB Report during meetings, noting that the recommended conditions did discuss salmon in detail and that climate change was not considered as part of the NEB assessment. They also expressed their view that the NEB Act is 'short-sighted' and does not allow for an adequate assessment that includes cumulative effects.

### **V - Potential Impacts of the Project on Adams Lake'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 Adams Lake's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Adams Lake'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 Adams Lake Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Adams Lake, Adams Lake'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.

It is the Crown's understanding that Adams Lake did not participate in a traditional land and resource use (TLRU) study for the Project. Adams Lake indicated that they were not provided with funding to complete a TLRU study for the Project. The Crown has relied on available traditional land and resource use information, including submissions made by Adams Lake, to assess potential impacts of the Project on Adams Lake Aboriginal Interests.

In Oral Traditional Evidence and Written Evidence provided by Adams Lake, members spoke about the importance of the land to their way of life and their long history of relying on natural resources including salmon, deer, berries, and roots for food, medicine, spiritual, and cultural purposes. The impact that historic and existing development has already had in their traditional territory was communicated. Members spoke about restricted access to gathering sites as a result of industrial development and ski hills; about restricted fishing due to restrictions placed by Fisheries Officers, and impacts to fish habitat as a result of forestry operations and sawmills. The importance of being able to carry out their traditional Aboriginal rights and practices was communicated by all presenters and it was noted that Adams Lake has a full immersion, community run school where students have the opportunity to learn language, knowledge, and history relevant to their culture.

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

Adams Lake identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including loss of wildlife and wildlife habitat, effects to vegetation from off-highway vehicles, cumulative effects on grizzly bear mortality risk, the effectiveness of *Species at Risk Act*, and that mitigation methods proposed by the proponent may be unsuccessful (e.g., wetland reclamation) and that monitoring and reclamation (e.g., wetlands) may not be effective. In general, Adams Lake raised concerns with the cumulative effect of concurrent activities, including industrial, residential, and commercial developments, throughout their traditional territory making it difficult for them to exercise their Aboriginal rights and carry out traditional activities.

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 Adams Lake, the proponent would implement several mitigation measures to reduce potential effects to species important for Adams 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. The proponent has committed to meeting with Adams Lake Indian Band to discuss their concerns, and to review the Trans Mountain EPP prior to the start of construction. Further, the proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to

stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use.

The Crown also understands the proponent, in response to Adams Lake's specific concerns expressed related to cumulative effects on grizzly bear mortality risk, has committed to coordinating access and new clearing requirements with other industrial users in the area to minimize human activity in grizzly bear habitat and to control access where access cannot be avoided (in addition to the Project specific mitigation developed). The implementation of the Wildlife Conflict Management Plan and the Grizzly Bear Management Plan, as part of the environmental protection plans would be expected to prevent or reduce any direct bear mortalities associated with Project construction and operations. In addition, the proponent is committed to continued development and implementation of the mitigation strategy for the North Cascades, Grande Cache, and Yellowhead Grizzly Bear Population Units. The grizzly bear mitigation strategy includes objectives consistent with current regulatory guidelines and will be developed in consultation with the appropriate regulatory authorities and affected Aboriginal groups. As follow up to this commitment, the NEB required that the Grizzly Bear Mitigation Plan be prepared as a condition of Project approval and incorporate input from Aboriginal groups.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Adams Lake's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown appreciates that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Adams Lake. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites (section 4.3.1 of this Report). The proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Adams Lake's hunting, trapping, and plant gathering activities, 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 disturbance to access to Adams Lake's traditional lands. The proponent has committed to minimizing the development of 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 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 Adams Lake prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Adams Lake to develop strategies to most effectively communicate the construction schedule and work areas to community members. Further, the proponent is committed to continued consultation and engagement with Aboriginal groups that are interested during construction.

Adams Lake 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, particularly the impacts on their traditional way of life, including an erosion of culture and impacts to their oral traditions and knowledge. The Crown appreciates that short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (section 4.3.1 of this Report). With regards to specific concerns raised by Adams Lake, the proponent would implement several mitigation measures to reduce potential effects to Adams Lake's hunting, trapping, and plant gathering activities. 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 Adams Lake, Adams Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant 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 Adams Lake'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 have minor to moderate environmental effects on species harvested by Adams Lake;
- Project-related pipeline and facility construction and routine maintenance activities within Adams Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Adams Lake's community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Adams Lake regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

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

Sockeye salmon is a key species that is central to Adams Lake culture and way of life. Adams Lake identified several concerns related to environmental effects of the Project on fishing activities, in particular impacts to fish and fish habitat, framed within the issue of having sustainable salmon runs. Concerns of the risk of aquifer and surface water contamination due to the Project and cumulative effects on fish and fish habitat were also raised.

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. 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 Adams Lake, the proponent would implement several mitigation measures to reduce potential effects to species important for Adams Lake'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. Additionally, water quality will be monitored during all instream activity. Each watercourse will be approached correctly so the cumulative effects of changes to all the crossings and the surrounding watershed will be limited. The Crown also understands the proponent, in response to Adams Lake's specific concerns regarding the potential for serious harm and offset plans and as part of the Project planning and development, provided the results of the serious harm self-assessment for all fish-bearing watercourses associated with the Project to the NEB.

To address Adams Lake's expressed concerns about the potential contamination of food fish in the event of a spill, the proponent committed to consulting with Fisheries and Oceans Canada and potentially affected Aboriginal groups to identify mutually acceptable in-kind or replacement measures to replace or offset impacts directly related to and caused by the spill. The proponent has committed to further engagement with the Adams Lake to discuss ideas regarding an offset plan, should it be required. Further, the proponent is committed to meeting with Adams Lake to discuss their concerns, and to review the Trans Mountain EPP prior to the start of construction.

Adams Lake raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including impacts to salmon rearing habitat in Adams and Quesnel Lakes. Increased access by non-Aboriginal anglers and effects on fish populations were also raised. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Adams 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 Adams 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 important for Adams Lake (section 4.3.2 of this Report). With regards to specific concerns raised by Adams Lake, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Adams Lake's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Adams Lake's traditional lands, as described in the Access

Management Plan. The proponent committed to working with Adams Lake to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Adams Lake expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including potential impacts from the Project on their traditional way of life, including an erosion of culture and impacts to their oral traditions and knowledge. Adams Lake noted the necessity for clean water to sustain healthy fish, and effects to the health of communities if there are impacts to salmon populations on which the community relies. The community's ceremonial life is shaped by their interaction with the salmon. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Adams Lake's fishing activities. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. NEB conditions, if the Project is approved, would either directly or indirectly reduce potential social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Adams Lake, Adams Lake'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 Adams Lake'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 have minor to moderate environmental effects on species harvested by Adams Lake;
- Project-related pipeline and facility construction and routine maintenance activities within Adams Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Adams Lake's community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Adams Lake regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

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

Adams Lake identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including the cumulative effect of concurrent activities, including industrial, residential, and commercial developments, throughout their traditional territory making it difficult for them to exercise their Aboriginal rights and carry out traditional activities. 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 of this Report). With

regards to specific concerns raised by Adams Lake, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Adams Lake's traditional and cultural practices. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalization, narrowing the RoW 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.

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 appreciates that Adams Lake's opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Adams 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.

Adams Lake 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 potential impacts from the Project on their traditional way of life, including an erosion of culture and impacts to their oral traditions and knowledge. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Adams Lake's cultural and spiritual practices, or that their participation in the traditional activity is curtailed, during Project construction and routine maintenance activities.

In consideration of the information available to the Crown from the NEB process, consultation with Adams Lake, Adams Lake'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 Adams Lake'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 construction and routine maintenance activities are likely to have minor to moderate environmental effects on Adams Lake's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Adams Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Adams Lake's community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and

- Concerns regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

### ***Impacts on Aboriginal Title***

The Crown notes that the Project would be located within an area of Adams Lake's traditional territory assessed as having a weak *prima facie* claim for Aboriginal Title, as this area is outside of the area ethnographers historically attribute to the Shuswap Lakes Division and there are limited indications of historic Shuswap Lakes Division uses at 1846<sup>6</sup>.

The Crown has actively consulted with Adams Lake throughout the NEB process and Crown consultation process in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Adams Lake throughout the NEB and Crown consultation process include:

- Impacts could impede or disrupt Adams Lake's use of its asserted traditional territory, including potential alienation of Adams Lake territory;
- Activities could affect Adams Lake's ability to manage and make decisions over the Project area, including loss of culture; and
- Project-related activities that could affect Adams Lake's economic opportunities in its asserted traditional territory.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. The Crown understands that, in addition to NEB conditions that would require the proponent to report on heritage resources and traditional use investigations (NEB Conditions 97 and 100), the proponent has committed to meeting with Adams Lake prior to the start of construction to discuss and address concerns, where possible. It is noted that Adams Lake has not executed a Mutual Benefits Agreement with the proponent.

The Crown also appreciates Adams Lake's concerns regarding spills, and the potential for a spill to impact Adams Lake'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 economic opportunities Adams Lake has for its territory. The Crown acknowledges the very low likelihood associated with a credible worst-case pipeline spill that could cause serious impacts to Adams Lake's Aboriginal Interests as they relate to title. The Crown also acknowledges the comprehensive set of mitigation measures committed to by the proponent to minimize the likelihood of a pipeline spill and reduce the magnitude of impacts in the event a spill occurs (Section 4.3.6 of this Report).

---

<sup>6</sup> Ibid.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5 of this Report, it is the Crown's opinion that the Project is expected to have a negligible impact on Adams Lake's asserted Aboriginal title to the Project area.

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

Adams Lake expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly related to potential effects on salmon from spills, including the risk of increased tanker traffic in the marine environment, potential delays in responding to spills or other environmental risks at remote water crossings, and flooding that could increase the risk of a spill from the pipeline.

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, the proposed crossing of three Adams Lake reserves, as well as information available to the Crown on Adams Lake's Aboriginal Interests and concerns raised by Adams Lake during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Adams 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 spill<sup>7</sup>.

The Crown also appreciates Adams Lake's concerns regarding spills, and the potential for a spill to impact Adams Lake'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 Adams Lake's economic opportunities 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 Adams Lake's Aboriginal Interests and concerns raised by Adams Lake during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Adams Lake's Aboriginal Interests. 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. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources and are at greater risk for adverse effects from an oil spill<sup>8</sup>.

---

<sup>7</sup> Trans Mountain Final Argument, p. 85 and 207

<sup>8</sup> Trans Mountain Final Argument, p. 85 and 207

## **VI - Conclusions**

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 Adams Lake's Aboriginal Interests would be up to minor.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Adams Lake's ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Adams 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 Adams Lake, as discussed in Sections 4 and 5 of the main body of this report.