

Appendix B.24 - Stk'emlupsemc te Secwe'pemic Nation

I - Background Information

The Secwe'pemic (pronounced "suh-Wep-muhc") are part of the Interior Salish People, who are considered to historically have been a semi-nomadic trading society, gathering berries in the summer, and hunting and fishing throughout the year. Tk'emlúps te Secwe'pemic (Kamloops) and Skeetchestn Indian Bands are ethnographically recognized as part of the 'Kamloops Division' of the Secwe'pemic who are in turn is part of the larger Secwe'pemic (Shuswap) Nation. Some Secwe'pemic members speak and/or are learning the traditional language, Secwepemcstin.

Tk'emlúps te Secwe'pemic and Skeetchestn Indian Band formed the Stk'emlupsemc te Secwe'pemic Nation (SSN) in 2007 through a formal *Resource Sharing Protocol Memorandum of Understanding* (MoU). Under the terms of the MoU, SSN is responsible for managing conservation policies and natural resources within both nations' traditional territory, leading negotiations with governments and industry, and promoting the economic development of the SSN people.

Tk'emlúps te Secwe'pemic (Kamloops)

Tk'emlúps te Secwe'pemic has six reserves in the Kamloops area: Hihium Lake Reserve no. 6 (31.8 hectares [ha]), Kamloops Reserve no. 1 (13,283.4 ha), Kamloops Reserve no. 2 (6 ha), Kamloops Reserve no. 3 (3 ha), Kamloops Reserve no. 4 (72.8 ha), and Kamloops Reserve no. 5 (18.6 ha). The community has a total registered population of 1,322 (549 are living on their reserve, 108 living on other reserves and 664 living off the reserves, and one living on No Band Crown Land).

Skeetchestn Indian Band

Skeetchestn Indian Band (Skeetchestn) is located along the northern bank of the Thompson River in south-central British Columbia (BC), approximately 50 kilometres (km) west of Kamloops. Skeetchestn has four reserves: Skeetchestn (7,975.7 ha), Marshy Lake Indian Reserve No. 1 (62.7 ha), Hihium Lake No. 6A (2.1 ha), Hihium Lake No. 6B (2 ha). Its total registered population is 533 (221 members are living on Skeetchestn reserves, 29 are living on other reserves, and 283 are living off-reserve).

The SSN filed a claim in the BC Supreme Court on September 21, 2015 seeking a declaration of Aboriginal rights and title to a territory identified in the claim. Both Tk'emlúps te Secwe'pemic and Skeetchestn are party to the Secwe'pemic Nation protective *Writ of Summons*. The *writ* was filed in the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the *writ*, stretching southeast of McBride along the Alberta border to Invermere, southwest toward Trail, and northwest toward the Taseko Lakes. The *writ* also included Adams Lake Indian Band, Bonaparte Indian Band, High Bar First Nation, Neskonlith Indian Band, North Thompson Indian Band, Spallumcheen Indian Bands, and Whispering Pines/Clinton Indian Band.

II - Preliminary Strength of Claim Assessment

- Approximately 80 km of the proposed pipeline right-of-way (RoW) and two pipeline facilities (Black Pines Station and Kamloops Terminal) would be located within SSN's asserted traditional territory. The zone between KP 810 and 815 is less than 3 km from the Tk'emlúps te Secwe'pemic Reserve.
- The existing and proposed RoW cross through Secwe'pemic Nation's asserted traditional territory for approximately 350 km.
- The Crown's preliminary assessment of the Tk'emlúps te Secwe'pemic and Skeetchestn's claim for Aboriginal rights over the section of the Project that spans the area from Barriere to Stump

Lake, involves a range of a moderate to strong *prima facie* claims. The areas assessed to have a strong *prima facie* claim are in the vicinity of Kamloops to Trapp Lake, which falls within an area considered by ethnographers to be within the historic Kamloops Division territory and where there are indications for Kamloops division hunting, fishing, gathering and trails around the time of contact inclusive of Heffley south to Trapp Lake. The areas with a moderate claim are in the vicinity of Stump Lake and a distance north of Heffley Creek, where most available ethnographers indicate to be outside of the historical Kamloops division territory around the time of contact¹.

- In September 2015, SSN filed a Notice of Civil Claim seeking a declaration of Aboriginal title to an area where the borders are described as being from Ashcroft on the Thompson River and an area west of the Fraser River to Quesnel in the north, east to Windemere, along the northern part of the Arrow Lakes to the Salmon River and Enderby, to the Logan Lake plateau south of Kamloops and back to Ashcroft. The above assessment of the strength of claimed Aboriginal title was conducted to inform the scope of consultation regarding this Project. It is a preliminary assessment only, considering only information reasonably available at the time of consultation and is not based on an exhaustive review of all information and legal issues related to this potential claim, and does not reflect the Crown's opinion of whether the court will ultimately decide in favour of SSN in the litigation of this claim.
- The Crown's preliminary assessment of the Tk'emlúps te Secwe'pemc and Skeetchestn's claim for Aboriginal title over the section of the Project that spans the area from Barriere to Stump Lake involves a range of a weak to strong *prima facie* claim. The areas assessed to have a strong *prima facie* claim for Aboriginal title are in the vicinity of Kamloops where there are indications of a historic village near Kamloops and there are indications of historic Kamloops division uses in the Kamloops vicinity at 1846 such as hunting, fishing, and gathering. The areas of weaker (i.e. weak) claims include those areas that were outside of what ethnographers considered the historic Kamloops division territory (e.g. north of Heffley Creek) and where there is limited indication of use/presence by the historic Kamloops division².

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¹ Ministry of Justice, Aboriginal Research Division, "Secwepemc Nation: A Brief Ethnohistoric Overview of the Eastern Divisions" (Revised 2012):

; 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; 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.

² Ibid

information and legal issues related to this potential claim, and does not reflect the Crown's opinion of whether the court will ultimately decide in favour of SSN in the litigation of this claim.

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 SSN's Aboriginal Interests, the Crown is of the view that the legal duty to consult SSN lies at the deeper end of the *Haida* consultation spectrum. SSN was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords SSN opportunities to be consulted at a deeper level.

SSN actively participated as an intervenor in the National Energy Board (NEB) process. SSN submitted written evidence, participated in the various Information Request (IR) rounds, presented oral traditional evidence and written final argument. SSN also responded to Natural Resource Canada's Issues Tracking Table Information Request by further elaborating their concerns [A71234].

In August 2015, Tk'emlúps te Secwe'pemc signed a letter of support for the Project. Skeetchestn Indian Band was not a signatory to the agreement.

SSN have corresponded with the Crown throughout the Project's review process. This included emails, phone calls, and formal letters from the Major Projects Management Office (MPMO). The MPMO met with SSN in July 2014, and SSN again met with the Crown on August 3 and on October 6, 2016 to discuss the Project.

SSN signed a contribution agreement with NEB for \$36,920 in participant funding, plus travel for two of the oral hearings. The MPMO offered SSN \$18,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered SSN an additional \$21,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. SSN signed a contribution agreement with the MPMO in response to the first of these offers, for a total of \$18,000 in allocated funding. EAO provided SSN (Skeetchestn and Tk'emlúps te Secwe'pemc) \$10,000 in capacity funding to support participation in consultations with the Crown on October 6, 2016.

The Crown provided a first draft of this Consultation and Accommodation Report (the Report) to SSN for review and comment on August 17, 2016. The Crown did not receive comments from SSN on the first draft of this Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from SSN.

IV - Summary of Key Stk'emlupsemc te Secwe'pemc Issues and Concerns Raised

The Crown gained its understanding of SSN's issues and concerns through the community's intervention in the NEB hearing process, and through direct engagement and consultation. SSN provided a significant volume of information through the NEB hearing process that has been used by the Crown to develop an Issues Tracking Table. This was filed in the Information Request to Intervenor Round to solicit feedback from SSN, and their responses³ have further contributed to the Crown's understanding. What follows is a summary of the Crown's understanding of SSN's key Project-related issues and concerns are

³ SSN's response to Natural Resources Canada's Information Request is found here: <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451406/2798201/C325-16-2 - SSN - Response to Government of Canada s IR Request - A4R4G7.pdf?nodeid=2797650&vernum=-2>.

summarized below^{4,5,6,7,8,9}. This is a summary of the key issues raised by SSN, 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 Consultation

SSN is concerned about the methods used by the NEB to assess impacts on rights, including Aboriginal title rights. SSN has also told EAO that the EAO process for assessing impacts to SSN Interests is narrow and compartmentalized, and does not reflect the temporal, spatial and integrated nature of SSN interests. SSN has repeatedly stated that the BC and NEB process is flawed and deficient in dealing with its concerns, because it is narrow in scope, and does not adequately incorporate Secwepemc laws, spirituality, land-based economics and traditional knowledge in a way that acknowledges the interconnections between the Secwepemc people, families and family groupings, their culture, the elements of the landscape, including sky, earth and water, and the flora and fauna on the landscape. In turn, this flaw makes the process ineffective in relation to assessing impacts to Aboriginal Rights including Title.

SSN stated that the NEB hearing process is an inappropriate forum for assessing impacts to their Aboriginal rights. SSN also expressed concern about the NEB process' legislated timelines and the way these timelines were unilaterally imposed on them. SSN considers this timeline extremely restrictive and does not believe it affords SSN sufficient time to review the application and participate meaningfully in the review process. SSN has stated that their ability to participate in the process is further hampered by a lack of capacity funding from either the NEB or the Crown. SSN has expressed a view that related regulatory (i.e. permitting) processes are not well-coordinated, which they believe results in an incomplete sharing of potential effects to SSN Interests. They refer to the perceived disconnected process between the proposed Project and proposed Ajax Mine application review. SSN are not satisfied with the current crown engagement model and the lack of addressing SSN's needs for a nation-to-nation dialogue about their concerns and interests, and have proposed that the Crown develop a MoU to address these issues and provide a framework for the dialogue moving forward.

SSN is undertaking their own assessment process in addition to participating in the provincial and federal environmental assessments for another project, the proposed Ajax Mine project. SSN indicated that they wish to conduct their own assessment of the proposed TMX Project. The SSN expect that the assessment would be half funded by the proponent, and half by all levels of government including SSN for a total cost estimate of four million dollars. The study would take approximately four years to complete and would involve the development of a cultural heritage study and associated social, biophysical and archaeological work. SSN has repeatedly stated that an assessment of impacts to their rights, including title, cannot be considered complete without a cultural heritage study.

⁴ Pottinger Gaherty Environmental Consultants Ltd. 2015. Input to SSN Information Requests for the Trans Mountain Expansion Project (Round 2 Information Request). January 15, 2015. ([A4G6A8](#))

⁵ Stkèmlupsemc of the Secwèpemc Nation. 2014. Oral Traditional Evidence. ([A4E9G4](#))

⁶ Stkèmlupsemc of the Secwèpemc Nation. 2015. Written Evidence ([A70220](#))

⁷ Kinder Morgan Canada. 2016. Trans Mountain Expansion Project: Draft Aboriginal Engagement Report. May 18, 2016.

⁸ SSN Written Argument. Jan 12, 2015. (A4X4T3)

⁹ [BCEAO TMEP Aboriginal Engagement Report. July 2016.](#)

Environmental Impacts

SSN raised concerns about impacts to wildlife and wildlife habitat (including listed species), water quality and quantity, fish (including listed species), riparian and in-stream habitat, and wetlands within SSN asserted territory, in particular: in and around Jacko Lake, Peterson Creek, Lac du Bois Grasslands Protected Area, and Douglas Lake Plateau.

SSN indicated that moose and deer habitat loss, fragmentation of winter range habitat, disturbance of seasonal ranges, road access, sensory disturbance, increased hunting, predation, and collision mortality are of concern. Approximately 60-70 species of herbs and medicinal plants are harvested by SSN members. Herbs and medicinal plants, especially in the Peterson Creek area and also within the Lac du Bois Grassland, may be destroyed during Project construction and not adequately restored. Foods, plants, and endangered species may be trampled during construction and operations. This is particularly true in the Lac du Bois Grasslands Protected Area, the Jacko Lake Grasslands, and other grassland regions within their traditional territory. Jacko Lake is also considered to be extremely important for spring trout fishing, which provides an early source of protein in the spring. SSN identified gaps in information provided in the NEB assessment related to grouse and upland game birds which utilize grassland areas.

Cultural and Social Impacts

SSN is concerned about the overall impacts of the Project, set in conjunction with decades of cumulative effects from past and proposed future developments, on cultural and sacred sites in their territory. SSN articulated concerns, through the NEB process and to the Crown directly, about the cultural and social effects of many generations of land disturbance in the vicinity of the proposed Project. These include:

- Impacts to the culture of sharing where families are unwilling to share harvest sites fearing that important items are becoming scarce;
- Disruption of access to harvesting sites or opening access to culturally important sites; and
- The loss of opportunities to pass culture and traditions to future generations of Secwe'pemic people.

The proposed pipeline corridor is located near Jacko Lake. The lake and the surrounding grasslands (known by SSN as Pipsell), are of great cultural and spiritual importance to SSN, and are described as a keystone cultural place. SSN engage in multiple traditional activities at Pipsell, such as fishing, hunting and gathering of medicinal plants, as well as ceremonial activities. Pipsell is also the site of the SSN Trout Children Story, a Secwe'pemic stspetekwll (true telling) that connects the past and present of Secwe'pemic culture by sharing moral, spiritual and social values and knowledge. Pipsell is a site that is of historical, archaeological and paleontological significance, and as such the area is irreplaceable to the Secwepemic people.

SSN recently advised EAO that a newly constructed men's sweatlodge is located near Jacko Lake (on fee simple land owned by KGHM Ajax Mining Inc., proponents of the proposed Ajax Mine Project), and a women's sweatlodge will be constructed in the vicinity in summer 2016. SSN expressed concern about the impact that the Project could have on SSN's current and future ability to carry out cultural activities in the vicinity of the Project. They state that the Project may affect the transmission of knowledge to younger generations, who may not be able to access the area or may avoid the area due to reduced quality of experience or perceived contamination.

Cumulative Effects

SSN is deeply concerned about the contribution of the Project to existing cumulative effects within their traditional territory. SSN stated that each project furthers the already serious negative environmental damage that has occurred within their territory since contact with Europeans. Particular concerns include knapweed and invasive species, climate change (on cycle of species), industrial and forestry activities (including increased access for sport and non-Aboriginal hunters and existing access restrictions for Aboriginal community members), and proposed mines (NewGold's New Afton Mine, Teck's Highland Valley Copper Mine, and KGHM Ajax Mining Inc.'s proposed Ajax Mine Project). SSN is particularly concerned about the impact of cumulative effects on Jacko Lake and Peterson Creek watersheds, and Lac du Bois Grassland Protected Area. SSN is concerned that the cumulative effects of the Project and the proposed Ajax Mine Project have not been adequately assessed.

Impacts to Aboriginal Rights and Title

SSN assert Aboriginal title and claim Aboriginal rights throughout their entire traditional territory, including those lands crossed by the Project. SSN stated that because of their strong *prima facie* title and rights claims, their ownership over these lands must be respected. SSN has expressed concern regarding the potential restriction of access to their territory due to pipeline construction and operation activities and the impact that this will have on their Aboriginal rights, particularly their right to hunt, fish and harvest. The effects an oil spill would have on Aboriginal rights and title is also of concern. In September 2015, SSN filed a title case against the Province of BC over SSN's asserted traditional territory. SSN indicated that the Project traverses close to Pipsell, in which SSN have stated there is a strong *prime facia* case for both title and rights.

Accidents and Malfunctions

SSN is concerned about pipeline safety (e.g., efficacy of warning systems) and the risk of spills, especially related to waterways and waterbodies and also to fish and their habitat, in light of the recent spill on the North Saskatchewan River.

SSN indicated that the proponent's commitments to provide training and emergency and/or spill response training, and the proponent's anticipated spill response time, is inadequate. They are also deeply concerned about the potential impact of a spill on Pipsell (encompassing Jacko Lake, Peterson Creek and surrounding areas), and Lac du Boise Grassland Protected Area.

Proposed Accommodation Options

SSN have requested Nation-to-Nation engagement related to the broader issue of land management and decision making within their territory. SSN requested a consultation protocol agreement be developed, starting with a MoU for Nation-to-Nation consultation, which would take the form of a trilateral agreement between SSN, BC and Canada. SSN recommended a framework of sustainable Crown funding to participate in the MoU process, leading to a sustainable funding model to support ongoing land use management within SSN's territory.

At the October 6, 2016 meeting, SSN outlined a proposal to for an SSN resource development tax that they charge directly to proponents whose projects are in their traditional territory. SSN wants the federal and provincial Crown's to make the jurisdictional room necessary for the tax to be implemented.

SSN requested greater specificity within the conditions related to safety, emergency preparedness and response related to warning notifications to communities, and opportunities for training. SSN expressed a desire to have a terrestrial spill response centre stationed in their reserve and funded through a

spillage fee. SSN also requested that the pipeline be re-routed to protect important plant-harvesting grassland habitat on both sides of the river.

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 SSN 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.

SSN's Response to NEB Recommendation Report

While SSN did not provide specific comments on the NEB recommendations report conclusions, they have continued to engage with the Crown through meetings and negotiations related to accommodation measures.

V - Potential Impacts of the Project on SSN'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 SSN's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to SSN'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 SSN's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with SSN, SSN's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province.

The SSN conducted a third-party traditional land and resource use (TLRU) study. SSN filed the written evidence with the NEB in May 2015 ([A4L6J5](#)) ([A4L6K3](#)). The evidence provides a summary of TLRU information for SSN. In its Supplemental Technical Report ([A4S7I7](#)), the proponent estimated approximate distances and directions from the pipeline corridor based on information in SSN's report. Pipsell is located approximately 700 m east of the proposed pipeline corridor and is considered a cultural keystone place for SSN. Pipsell includes hunting, gathering, trapping and fishing areas. It is also the location of the Trout Children story which embodies cultural, spiritual and moral teaching about the correct relationship between SSN members, the animals, plants and the elemental worlds. SSN view Pipsell as an integral part of their cultural heritage and irreplaceable.

Impacts on Hunting, Trapping and Plant Gathering

As described in their TLRU study, SSN members hunt a variety of wildlife species including elk, deer, moose, mountain goat, sheep, caribou, bear, beaver, rabbit, marmot, porcupine, hare, squirrel, gopher, ground hog, grouse, duck, goose and crane. SSN members also harvest a variety of plants including, but not limited to, bitter root, cranberries, cottonwood, fennel, Devil's club, Oregon grapes, strawberries, pine nuts, yellow pine, and cedar. Soapberries are particularly important and are becoming more difficult to find in SSN territory. Sharing is a significant aspect of Secwe'pemc culture; however, as a result of the shortage of soapberries, community members may not share harvesting locations or berries.

SSN identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, particularly impacts to wildlife and wildlife habitat (including listed species), vegetation (including food, herbs, medicinal plants, and listed species), and wetlands within SSN asserted territory. SSN also expressed concerns with impacts of knapweed and invasive species, and cumulative effects within their traditional territory. 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 SSN, the proponent would implement several mitigation measures to reduce potential effects to species important for SSN'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 attracting 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 Crown understands that the proponent, in response to SSN's specific concerns related to impacts on wildlife, is committed to ensuring that an appropriately qualified professional will conduct any nest sweeps or species-specific surveys on SSN territory. Also, if sensitive species are found within SSN territory, the proponent is committed to including SSN in discussions with BC Ministry of Forests, Lands and Natural Resource Operations. The proponent is also committed to meeting with SSN to further discuss and address concerns, where possible, prior to the start of construction.

SSN identified 13 hunting sites and 5 plant gathering sites during the TLRU study, none of which are located within the proposed pipeline corridor. One plant gathering site at Jacko Lake is within 2 km of the proposed pipeline corridor, while the remaining hunting and plant gathering sites are more than 2 km away from the Project Area or the approximate distance from the Project Area was not provided. SSN did not identify trapping sites in its written evidence.

SSN raised concerns with the Project's potential impacts relating to specific locations and access on hunting, trapping, and plant gathering activities, particularly in and around Jacko Lake, Peterson Creek, Lac du Bois Grasslands Protected Area, Douglas Lake Plateau, and other grassland regions within their traditional territory. Pipsell is of great cultural and spiritual importance to SSN, where SSN engage in hunting and gathering of medicinal plants, and is irreplaceable to the Secwe'pemc people. Concerns related to increased access for sport and non-Aboriginal hunters and restrictions of access to their territory due to Project construction and operation activities and the impact that this would have on

their Aboriginal rights were raised. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to SSN'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 SSN. 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 SSN, 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 disturbance to access to SSN's traditional lands. The proponent is 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 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 SSN prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with SSN to develop strategies to most effectively communicate the construction schedule and work areas to community members.

The Crown understands that the proponent, in response to SSN's specific concerns related to increased access threatening wildlife and spread of invasive plants, has committed to consult with SSN on access control measures. Mitigation has also been developed to prohibit hunting by Project personnel during working hours and to exclude the use of the construction footprint to access areas for the purposes of hunting at any time. Further, in response to SSN's specific concerns that Jacko Lake required mitigation to protect the area for traditional uses, the proponent has committed to make efforts to provide continuous access to Jacko Lake for SSN.

SSN 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 impacts to the culture of sharing where families are unwilling to share harvest sites fearing that important items are becoming scarce, and loss of opportunities to pass culture and traditions to future generations of Secwe'pemc people. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to SSN's hunting, trapping, and plant gathering activities. The Crown appreciates that this short-term disruption could temporarily alter the behavior 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 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 SSN, SSN'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 (EAC) issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on SSN'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 SSN;
- Project-related pipeline and facility construction and routine maintenance activities within SSN's traditional territory are temporary and thus, likely to cause minor disruptions to SSN'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 SSN regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

In their TLRU study, SSN identified that community members fish for Chinook, sockeye, pink, and Coho salmon, steelhead, rainbow trout and cutthroat trout. Salmon is considered a staple food and important source of protein for SSN. SSN identified a total of 15 fishing sites, two of which are located within the proposed pipeline corridor. These sites include Thompson River and Fraser River. The fishing site at Jacko Lake is located within 2 km of the proposed pipeline corridor, while the remaining sites are more than 2 km away from the Project Area.

SSN identified many concerns related to environmental effects of the Project on fishing activities, in particular, impacts to water quality and quantity, fish (including listed species), and riparian and in-stream habitat, and cumulative effects within their traditional territory.

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 SSN, the proponent would implement several mitigation measures to reduce potential effects to species important for SSN'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.

SSN raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, specifically impacts in and around Jacko Lake and Peterson Creek, and potential restriction of access to their territory due to Project construction and operation activities and the impact that this would have on their Aboriginal rights. Pipsell is of great cultural and spiritual importance to

SSN, where SSN engage in fishing, and is irreplaceable to the Secwe'penc people. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to SSN'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 SSN 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 SSN (Section 4.3.2 of this Report). With regards to specific concerns raised by SSN, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for SSN's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to SSN's traditional lands, as described in the Access Management Plan. The proponent committed to working with SSN to develop strategies to most effectively communicate the construction schedule and work areas to community members. As previously discussed, in response to SSN's specific concerns related to increased access resulting in increasing fishing pressure and crowding, the proponent has committed to consult with SSN on access control measures. Mitigation has also been developed to prohibit recreational fishing by Project personnel during working hours and to exclude the use of the construction footprint to access areas for the purposes of fishing at any time. Further, in response to SSN's specific concerns that Jacko Lake required mitigation to protect the area for traditional uses, the proponent is committed to implement mitigation to ensure that Project personnel are prohibited from fishing in Jacko Lake during construction activities.

SSN expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including loss of opportunities to pass culture and traditions to future generations of Secwe'penc people. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to SSN'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 SSN, SSN'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 EAC issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on SSN'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 SSN;
- Project-related pipeline and facility construction and routine maintenance activities within SSN's traditional territory are temporary and thus, likely to cause minor disruptions to SSN'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 SSN regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Other traditional and cultural practices sites identified by SSN during the TLRU study include three trails and travelways, two gathering places, one habitation site, and one sacred area. One trail system to Kamloops Lake from the Shuswap and Adams Lakes is located within the proposed pipeline corridor and one sacred area at Jacko Lake is located approximately 700 m from the proposed pipeline corridor.

Pipsell has numerous culturally and spiritually significant sites, and is profoundly connected to Secwe'pemc history, cultural values, Indigenous laws, religious beliefs and values, ceremony and ritual, and many of the Secwe'pemc creation stories. A prayer tree location is at the entrance to the Jacko Lake / Peterson Creek area, which plays an important role in oral traditions. The remaining sites are more than 2 km away from the proposed Project Area.

SSN identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including cumulative effects on cultural and sacred sites in their territory. As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. 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 SSN, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for SSN's traditional and cultural practices. 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 RoW finalisation, 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. The proponent has also committed to developing and implementing an environmental education program to ensure that all personnel working on the construction of the Project are informed of the location of known sacred sites and burial sites. All sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity or the right-of-way will be clearly marked before the start of clearing.

SSN raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, particularly impacts on Pipsell, where SSN engage in ceremonial activities, is considered irreplaceable to the Secwe'pemc people. Opening access to culturally important sites was also raised as a concern. 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 SSN'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 SSN'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 and communicating this information to inform avoidance or mitigation efforts related to the location and construction of the Project. As previously discussed, the proponent has committed to make efforts to provide continuous access to Jacko Lake for SSN.

SSN expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, in particular on Pipsell, the site of the SSN Trout Children Story that connects the past and present of Secwe'pemoc culture by sharing moral, spiritual and social values and knowledge. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to SSN'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 SSN, SSN'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 EAC issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on SSN'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 SSN's traditional and cultural practices;
- Project-related construction and routine maintenance activities within SSN's traditional territory are temporary and thus, likely to cause minor disruptions to SSN'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 identified by SSN 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 Tk'emlúps te Secwe'pemoc and Skeetchestn's traditional territory assessed as having strong *prima facie* claim to Aboriginal title, in the vicinity of Kamloops where there are indications of a historic village near Kamloops and there are indications of historic Kamloops division uses in the Kamloops vicinity at 1846 such as hunting, fishing, and gathering.

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

- Impacts could impede or disrupt SSN's use of its asserted traditional territory;
- Activities, in combination with past projects and current proposed projects, could affect SSN's ability to manage and make decisions over the Project area, in accordance with Secwe'pemoc laws, spirituality, traditional economics and traditional knowledge; and
- Project-related activities that could affect SSN's economic benefit of the lands and resources in their 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. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on

the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved.

The Crown notes that Tk'emlúps te Secwe'pemc executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the Project proceeds. It is noted that Skeetchestn has not executed a Mutual Benefits Agreement with the proponent.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have negligible to minor impacts on SSN's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

SSN expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly the potential impact of a spill on Pipsell (encompassing Jacko Lake, Peterson Creek and surrounding areas) and Lac du Boise Grassland Protected Area. SSN also raised concerns about pipeline safety, the risk of spills, especially related to waterways and waterbodies and also to fish and their habitat, and the inadequacy of the proponent's commitments to provide training and emergency and/or spill response training, and the proponent's anticipated spill response time.

The Crown also appreciates SSN's concerns regarding spills, and the potential for a spill to impact SSN'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 SSN's economic benefit from the lands.

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 SSN's Aboriginal Interests and concerns raised by SSN during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on SSN'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 spill¹⁰.

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 SSN's Aboriginal Interests would be up to minor.

¹⁰ Trans Mountain Final Argument, p. 85 and 207

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

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Tk'emlúps te Secwe'pemc in an attempt to offset potential impacts, should the Project proceed.