

Appendix B.6 – Kanaka Bar Indian Band

I. Background Information

The T'eqt'aqtn'mux ("the crossing place people") or Kanaka Bar Indian Band (Kanaka Bar) are a community of the Nlaka'pamux (pronounced "Ing-khla-kap-muh") people whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. Kanaka Bar holds six reserves situated in the watersheds of the Fraser and adjacent small rivers. Kanaka Bar has a registered population of 235, including 64 members living on-reserve.

Kanaka Bar members historically spoke Nteʔkepmxcín, the language of the Nlaka'pamux people, which falls into the Interior Salish language group. The [Report on the Status of BC First Nations Languages](#) [2014] states that amongst Nlaka'pamux people, 2.1% are fluent speakers, 5.5% have some level of skill with language, and 6% are learners.

Kanaka Bar is a party to the Nlaka'pamux Nation's *Writ of Summons*, which was filed in the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ.

II. Preliminary Strength of Claim Assessment

- Kanaka Bar is a member band of the Nlaka'pamux Nation. Approximately 226 kilometres (km) of the proposed pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka'pamux's asserted traditional territory. However, the RoW does not overlap any portion of the consultation area utilized for Kanaka Bar. The distance from the RoW to the nearest Kanaka Bar community is 47.2 km.
- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka'pamux territory, and there are some indications of Nlaka'pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka'pamux territory, and there is indication of an ancestral connection between the Nlaka'pamux community who moved into the north end of Nicola Lake, intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim. The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka'pamux use¹.

¹ Ministry of Justice, Aboriginal Research Division, Nlakapamux: Review of Ethnographic and Historical Sources (Revised November 20, 2013); Teit, James, "The Thompson Indians of British Columbia" in *Memoirs of the American Museum of Natural History*, Volume II, 1900.; Dawson, George M., "Notes on the Shuswap People of British

- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal title over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 1846².

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 Kanaka Bar's Aboriginal Interests, the Crown is of the view that the legal duty to consult Kanaka Bar lies at the middle portion of the *Haida* consultation spectrum. In consideration that the Project would not intersect with Kanaka Bar's asserted traditional territory, Kanaka Bar was placed on Schedule C of the Section 11 Order issued by the Environmental Assessment Office (EAO). The consultation that was provided to Kanaka Bar is described in Section III of this appendix and is consistent with the middle portion of the *Haida* spectrum.

Kanaka Bar did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB, but was interested in meeting with the Crown to discuss the community's views on the Project. Kanaka Bar met with the Crown on May 19, 2016, and witnessed together the public release of the *NEB Recommendation Report* via live press conference.

The Major Projects Management Office (MPMO) offered Kanaka Bar \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Kanaka Bar an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Kanaka Bar did not use these funding opportunities.

The Crown provided a first draft of this Report to Kanaka Bar for review and comment on August 17, 2016. The Crown did not receive comments from Kanaka Bar on the draft 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 Kanaka Bar.

Columbia" in Transactions of the Royal Society of Canada, Section II, 1891; Wyatt, David, "Thompson" in Handbook of North American Indians, Vol. 12, Washington: Smithsonian Institution, 1998.

² Ibid.

IV. Summary of Kanaka Bar's Key Issues and Concerns Raised

The Crown has drawn its understanding about the issues and concerns of Kanaka Bar based on information brought forward at the May 19 and June 24, 2016 meetings as well as concerns raised in a July 2016 letter to Natural Resources Canada and EAO. The following concerns were raised by Kanaka Bar during Crown consultation:

Impacts Associated with Spills

- Potential environmental impacts in the event of a pipeline or tanker spill;
- Concerns around emergency spill response plan for the mid-pipeline section, as well as conditions to examine the fate and distribution of bitumen; and
- Concerns about oil shipments given the experience of Exxon Valdez, and that spills like that can't be completely cleaned up.

NEB Process and Methodology

- Concerns around a number of science gaps and uncertainty in the NEB review, involving such issues as the fate and behavior of diluted bitumen; and
- Limited mandate of the NEB review process.

Environmental Impacts

- Potential environmental impacts to the Fraser River, particularly wild salmon populations;
- Serious concerns about the potential extirpation of the salmon in the Fraser River; and
- Climate change impacts.

Impacts on Aboriginal Rights and Title

- Potential impacts to Kanaka's history, culture, language, laws, and economy in the event of a spill in the Fraser River; and
- Adverse impacts on Nlaka'pamux rights and title in terms of decision-making and jurisdiction over land and resource use.

Other Concerns

- Significant concerns wherever there is delegation of work and responsibilities by proponents to contractors, as contractors tend to bend or break the rules. Kanaka Bar has experience with its hydro partnership in providing ongoing monitoring to make sure that contractors are following the rules. Chief Mitchell was on that project site every day, and believes Kanaka Bar could perform a similar function on this Project; and
- Concerns about the safeguards in place in the event of a major earthquake, given their view it is common knowledge on the west coast that a big earthquake is a matter of 'when' not 'if.'

Although Kanaka has raised specific issues and concerns related to the Project, they defer decision making authority to the Nlaka'pamux communities adjacent to the Project.

Kanaka Bar's Response to NEB Recommendation Report

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

V. Potential Impacts of the Project on Kanaka Bar's Aboriginal Interests

A discussion of the Crown's approach to assessing Project impacts on Aboriginal Interests is provided in Section 2.4.3 of this Report. 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.

It is the Crown's understanding that Kanaka Bar did not participate in the NEB process and did not complete a traditional land and resource use study for the Project. As a result, the Crown has limited information on the specific sites and resources used by Kanaka Bar for traditional purposes that could be impacted by the Project. Kanaka Bar identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on Kanaka Bar's Aboriginal Interests.

The general direct and indirect effects of the Project on Aboriginal Interests, along with key mitigation measures, are described in Section 4.3 of the main body of this Report. As described in that section, routine Project-related activities are likely to result in low to moderate impacts on the lands, waters and resources that Aboriginal groups use to exercise their hunting, trapping, plant gathering, fishing, and other traditional activities. Short-term, temporary access disruptions to traditional activities are expected, although these impacts would be localized within the Project footprint for the pipeline and associated facilities. The distance of Kanaka Bar's traditional territory from the Project area of approximately 47 km significantly reduces the potential for Kanaka Bar's exercise of Aboriginal Interests to be directly impacted by routine Project activities. In consideration of the information available to the Crown from the NEB process, Crown consultation with Kanaka Bar, Kanaka Bar'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, the Project is expected to result in a negligible impact on Kanaka Bar's Aboriginal Interests.

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 Kanaka Bar's Aboriginal Interests, concerns raised by Kanaka Bar during the Crown consultation process, and the distance of Kanaka Bar's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Kanaka Bar's exercise of Aboriginal Interests, depending on the characteristics and severity of the spill. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty.

VI. Conclusions

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. In respect of these findings, and based on the information available to the Crown about areas where Kanaka Bar exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on Kanaka Bar would be negligible.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Kanaka Bar's ongoing involvement and participation in the proponent's detailed Project planning including the development of site-specific measures or pipeline routing to ensure negligible impacts on Kanaka Bar's Aboriginal Interests, as well as the involvement of Kanaka Bar in emergency response planning activities.