

Appendix B.8 – Siska Indian Band

I - Background Information

Siska Indian Band (Siska) is part of the Nlaka’pamux Nation (pronounced “*Ing-khla-kap-muh*”), whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. The Project pipeline right of way (RoW) crosses Nlaka’pamux’s asserted traditional territory.

Siska has 11 reserves: *Siska Flat No. 3, Siska Flat No. 5A, Siska Flat No. 5B, Siska Flat No. 8, Humhampt No. 6, Humhampt No. 6A, Kupchynalth No. 1, Kupchynalth No. 2, Moosh No. 4, Nahamanak No. 7, and Zaht No. 5*. There are 315 registered Siska members, of whom 89 live on a Siska reserve, 14 live on another reserve, and 212 live off reserve. Siska members historically spoke the Nlaka’pamux language; according to 2011 census data 11.5% of members have at least some knowledge of the language.

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

II - Preliminary Strength of Claim Assessment

- Siska is a member band of the Nlaka’pamux Nation. Approximately 226 kilometres (km) of the proposed pipeline 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. The RoW is approximately 48 km from the nearest Siska reserve.
- The Crown's preliminary assessment of the Nlaka’pamux Nation's claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka’pamux territory, and there are some indications of Nlaka’pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka’pamux territory, and there is indication of an ancestral connection between the Nlaka’pamux community who moved into the north end of Nicola Lake, intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim. The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka’pamux 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*

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

Siska was not registered as an intervenor or commenter in the National Energy Board (NEB) process, and did not submit an application for funding to the NEB. Siska was kept informed of the Crown's consultation activities during the course of the NEB review through various correspondences from the Major Projects Management Office (MPMO). Siska's engagement in consultation activities with the Crown began with correspondence in the post-NEB hearing phase and interest in meeting to discuss the Project as well as potential impacts on Siska's Aboriginal Interests.

The MPMO offered Siska \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Siska an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Siska did not make use of these funding opportunities.

EAO provided Siska with \$5,000 in capacity funding towards participation in the provincial process on October 27, 2016.

The Crown provided a first draft of this Report to Siska for review and comment on August 17, 2016. The Crown did not receive comments from Siska on the draft Report. Siska met with the Crown on August 9, 2016 to discuss the Project. 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 Siska.

History, Volume II, 1900.; Dawson, George M., "Notes on the Shuswap People of British Columbia" in Transactions of the Royal Society of Canada, Section II, 1891; Wyatt, David, "Thompson" in Handbook of North American Indians, Vol. 12, Washington: Smithsonian Institution, 1998.

² Ibid.

IV - Summary of Key Siska Issues and Concerns Raised

Based on key issues and concerns raised by other Nlaka'pamux groups through the NEB hearing process, it is possible to infer that the Project may impact Siska's Aboriginal Interests by affecting their ability to hunt, trap, gather and fish. The Project could potentially impact cultural and spiritual sites, and contaminate rivers and smaller fish bearing streams in the event of an accident or malfunction.

Esh-kn-am Cultural Resource Management Services conducted a joint, third-party traditional land and resource use study, the *Traditional Knowledge Project for the Kinder Morgan Trans Mountain Pipeline Expansion Project* (the *Traditional Knowledge Project*) for Coldwater Indian Band, Cook's Ferry Indian Band, Siska Indian Band, and Boston Bar First Nation (participating bands). In November 2016, the *Traditional Knowledge Project* report was provided to the Crown on the condition that it be used for the Project, and not be used for any other purpose. Concerns raised by participating bands in the *Traditional Knowledge Project* include:

- Potential environmental impacts affecting the integrity of the aquatic system, and impacts on spawning grounds, traditional medicines, and wildlife migration and mating;
- Protection of water for future generations including springs, creeks, falls, lakes and all mountain water;
- Use of herbicides may impact food sources and Siska's health;
- Potential impacts due to the presence of Project-related workforce, including pollution, increased pressure on wildlife and vegetation, health resources (e.g., hospitals), and safety for women;
- Potential impacts on Cultural Survival Areas, which are linked to Siska's health, safety and overall well-being;
- Potential impacts on spiritual areas, and cultural sites and trails that provide training places for their children and help Siska to hold onto their culture;
- Increased access by non-Aboriginals in to the traditional territory (including Project-related workers) if the pipeline were to be approved, as this would provide more access to hunters due to increased infrastructure, and would increase pressures on hunting and fishing resources;
- Disruption of access to traditional foods and cultural sites; and
- Potential impacts of a spill and clarity from the proponent on spill response procedures.

In a meeting with the Crown on August 9, 2016, Siska indicated that successful consultation would involve the development of trust and relationships between Aboriginal groups and the Crown and noted their experience with successful engagement with the province and Teck in the mining sector. Siska also indicated that capacity funding is insufficient for them to participate fully in the review.

Siska identified the following Project-related issues and concerns in the August 9, 2016 meeting with the Crown:

- Historical infringements of the existing Trans Mountain pipeline on Siska's Aboriginal Interests must be reconciled prior to Siska's engagement in discussion about the Project. Siska asserted that their community is opposed to the Project until historical grievances are addressed;

- Lack of presence of the federal Crown at the discussion table earlier in the NEB review process;
- Inadequate staff, resources, and funding to participate in the Crown consultation process;
- In Siska's confidential traditional land and resource use study submitted to the NEB, Siska identified and mapped traditional crossings, hunting areas, spiritual sites such as baby-naming places, the sites of puberty rights ceremonies, and training areas in Siska's traditional territory that have been negatively impacted by the Trans Mountain pipeline;
- A release of oil in the event of a pipeline spill has the potential to have a massive impact on Siska's Interests; and
- Lack of trust between Siska and the proponent and this relationship differs from other proponents that currently operate projects in Siska's traditional territory.

Siska indicated their interest in a reconciliation agreement with the proponent and the Crown to engage initially on historical grievances. This could take the form of a revenue-sharing agreement.

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 Siska. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

Siska's Response to NEB Recommendation Report

Siska did not provide any specific comments on the *NEB Recommendation Report*

V - Potential Impacts of the Project on Siska'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.

The discussion in this section focuses on potential impacts of the Project on Siska's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Siska'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 Siska's Aboriginal Interests considers information available to the Crown from the NEB process, consultation

with Siska, Siska's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province.

As previously discussed, Esh-kn-am Cultural Resource Management Services conducted a joint, third-party traditional land and resource use study, the *Traditional Knowledge Project*. In November 2016, the *Traditional Knowledge Project* report was provided to the Crown noting that it is a small sampling of Aboriginal rights practitioners due to time and budget constraints and is not a definitive study on the use of Aboriginal title lands or the practice of Aboriginal rights by the participating bands. The report includes site-specific information and estimates of the number of hectares that may be directly or indirectly impacted by the Project. The Crown has relied on this information to assess potential impacts of the Project on Siska's Aboriginal Interests.

Impacts on Hunting, Trapping and Plant Gathering

As summarized in the *Traditional Knowledge Project* report, many families within the community still rely on the meats obtained through hunting activities for both economic and cultural reasons. Participating bands identified approximately 43 hunted and trapped species, and commonly hunted species include mule deer, white-tailed deer, moose, willow grouse, spruce grouse and blue grouse, and to a lesser degree, ptarmigan, ducks, and smaller mammals. Many community members use the hides, antlers, hooves and other parts for clothing, arts and crafts or decoration. Many community members hunt from the late summer into the winter, while others hunt year round, as needed. Gathering berries, roots, plants and trees are an important activity of Siska, with gathering primarily taking place in the spring, summer and fall seasons, with limited gathering of shrubs and tree components in the winter months. Plant gathering continues to have importance as part of the seasonal migration of the people. Plants are gathered for food and medicine, and community members have extensive knowledge of the culturally and historically significant plants on the traditional territory, and both the plants used by people and the plants that are central to maintaining healthy wildlife, bird and fish populations. Hunting and trapping, as well as travelling and camping on the land during hunting and trapping trips, link participatory bands to their ancestors and the practices enable community members to express important aspects of their cultural identities.

Siska identified several concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts on traditional medicines and wildlife migration and mating. 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 Siska, the proponent would implement several mitigation measures to reduce potential effects to species important for Siska'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

would 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 Wildlife Management Plans.

As summarized in the *Traditional Knowledge Project* report, the total hectares of the hunting and trapping areas in the Project area is more than 2,060 hectares (ha) (over 59% of the Project area within Nlaka'pamux territory), and the total hectares of plant gathering and medicinal sites is more than 1,962 ha (over 56% of the Project area within Nlaka'pamux territory). Hunting and trapping areas have a high overall value to participating bands. Of the hunting and trapping areas identified within the Project area, ungulate cultural use areas and fur-bearer cultural use areas were noted as having high cultural, social, economic and subsistence values. Participating bands identified more than 70 important plants gathered, and engage in far-reaching plant gathering activities across the traditional territory. The plant gathering sites have different meanings and uses associated with them, including gathering plants for food and medicine, or sites associated with plants used for construction of drying racks for smoking meat. Of the plant sites identified within the Project area, participating bands indicated they have high cultural, social, economic, and subsistence value.

Siska raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including increased access for non-Aboriginals and disruption of access to traditional foods. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Siska'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 Siska. 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). With regards to specific concerns raised by Siska, the proponent would implement several mitigation measures to reduce potential effects on traditional land and resources use (TLRU) sites important for Siska'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 Siska'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 would be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Siska prior to construction, the sites would be assessed, and appropriate mitigation measures would be determined. The proponent committed to working with Siska to develop

strategies to most effectively communicate the construction schedule and work areas to community members.

Siska 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 on community health standards, and Siska's overall well-being. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Siska's hunting, trapping, and plant gathering activities. The Crown appreciates that this 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 Project footprint, 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).

In consideration of the information available to the Crown from consultation with Siska and other Nlaka'pamux groups, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant 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-to-moderate impact on Siska's hunting, trapping and plant gathering activities. In reaching this conclusion, the Crown has considered the following factors that have been discussed above:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Siska;
- Project-related pipeline and facility construction and routine maintenance activities within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Siska'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 Siska regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Fishing activities currently (and historically) occur at various locations in the watershed, including Nicola Lake, Coldwater and Nicola rivers, along with the many smaller rivers and streams within the territory. Fishing occurs in the streams, creeks and rivers from the spring through the fall, and typically year round in the lakes. Historically, fish provided an important supplement to ungulate meat and other game during the seasonal migration of the people. Local species fished include trout (e.g., rainbow, Dolly Varden, brooks, bull, and brown trout), whitefish, steelhead, suckers, and salmon (e.g., chinook, sockeye salmon, coho and chum). Participant bands noted that fish stocks are in decline from when they were young, and recognize the importance and need for habitat improvements and conservation. Fishing has

high cultural, social, economic and subsistence values. Siska noted that important social, political and spiritual events take place during the spring and summer fishing gatherings, as they did historically.

Siska identified many concerns related to environmental effects of the Project on fishing activities, including impacts on the integrity of the aquatic system and impacts on spawning grounds. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in minor 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 Siska, the proponent would implement several mitigation measures to reduce potential effects to species important for Siska'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.

As summarized in the *Traditional Knowledge Project* report, participating bands indicated that 1,427 ha of land associated with existing fishing activities would be impacted by the Project. Participating bands noted occurrences and impacts on 20 fish species in the Project area, in the waters of the Coldwater, Nicola and tributary rivers and streams.

Siska raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including increased access by non-Aboriginals and disruption to access to traditional foods. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Siska'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 Siska 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 social, cultural, spiritual or experiential effects associated with fishing activities or would directly or indirectly avoid or reduce impacts to access to fishing sites important for Siska (Section 4.3.2 of this Report). With regards to specific concerns raised by Siska, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Siska's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Siska's traditional lands, as described in the Access Management Plan. The proponent committed to working with Siska to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Siska expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including impacts on community health standards, and Siska's overall well-being. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Siska'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 the 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 consultation with Siska, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant 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 Siska's freshwater fishing activities. In reaching this conclusion, the Crown has considered the following factors that have been discussed above:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Siska;
- Project-related pipeline and facility construction and routine maintenance within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Siska'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 Siska regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

According to Siska, the existing and proposed pipeline corridor would have substantial and permanent impacts on Cultural Survival Areas. Cultural Survival Areas are defined as "an area, place or body of water that was and continues to be of such importance, significance and sensitivity to the culture and sustenance of the Nlaka'pamux, that to modify, change or develop will/may render the area, place or body of water culturally unsustainable."³

As summarized in the *Traditional Knowledge Project* report, 11 different Cultural Survival Area site types were identified by participating bands within the Project footprint: Fix Oneself, Ghosted, Gravesite, Legend/Myth/Origin Story, Little People, Pit House, Puberty Site, Sasquatch, Sweathouse, Training Site, and Xa?xa?. Each Cultural Survival Area site has unique, culturally significant and important aspects. During the TLU, 14 tutelary species and cultural occurrences (e.g., trails, gathering places, camp sites, drying rack sites, trading places, and cultural activities such as swimming in rivers and hiking) were identified by participating bands in the Project area. A tutelary species is defined as a guardian, patron or protector of a particular place, geographic feature, person, lineage, nation, culture or occupation (e.g., bald eagle, golden eagle, great horned owl, hawk, rubber boa). Trails, place names and camps

³ *Nlaka'pamux Cultural Survival Area Policy; 2012; Esh-kn-am CRMS and NWRM Ltd. and Raymond Phillips*

provide important ways for the participating bands to access and live on the lands and gather resources or engage in cultural and spiritual practices. The tutelary species and cultural occurrences identified within the Project area are considered to have high cultural, social, economic and subsistence value.

Siska identified concerns related to environmental effects of the Project on other traditional and cultural practices, particularly Cultural Survival Areas. 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 Siska, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Siska'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.

As summarized in the *Traditional Knowledge Project* report, the existing and proposed pipeline corridor would have substantial and permanent impacts on 11 identified Cultural Survival Areas encompassing over 1,725 ha (59% of the proposed Project area within Nlaka'pamux territory), and would create significant changes and impacts which exceed 1,427 ha of spiritual and cultural places and existing fishing sites including 40% of Tutelary (spiritual protection). Participating bands noted that the Project would impact 894.8 ha of Cultural Survival Areas sites and approximately 25% of the Cultural Survival Areas that occur within the Project area.

Siska raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, including disruption of access. The Crown appreciates that Siska'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 Siska'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.

Siska 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 Siska's health and overall wellbeing. As described previously, the Crown appreciates that Project-related activities may result in

temporary interruptions to Siska'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 Siska, Siska'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-to-moderate impact on Siska'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 Siska's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Siska'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 Siska 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 Siska traditional territory assessed as having 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. Siska described Aboriginal uses as throughout the Nlaka'pamux territory. Occupancy areas have not been identified, but cultural survival sites have been noted as within the proposed pipeline corridor.

The Crown has actively consulted with Siska 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 throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Siska's use of its asserted traditional territory;
- Activities that affect Siska's ability to manage and make decisions over the Project area; and,
- Project-related activities that could affect Siska's economic development aspirations for 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. 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. It is noted that Siska 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 minor impacts on Siska's asserted Aboriginal title to the Project area.

Impacts Associated with Accidental Pipeline Spills

Siska expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the proponents' spill response procedures.

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

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Siska's Aboriginal Interests and concerns raised by Siska during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Siska'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 spill⁴.

VI - Conclusions

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

⁴ Trans Mountain Final Argument, p. 85 and 207

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Siska's on-going involvement and participation the proponent's detailed project planning, including the development of site-specific measures to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Siska 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 Siska, as discussed in Sections 4 and 5 of this Report.