

## Appendix C.10 – Kwantlen First Nation

### I- Background Information

Kwantlen First Nation (Kwantlen) is a Coast Salish community located north of Langley, British Columbia (BC) on the Fraser River. Kwantlen holds seven reserves, six of which are located west of Langley, primarily on the north bank of the Fraser River (McMillan Island reserve is located in the Fraser River): Langley Reserve No. 2 (58.3 hectares [ha]), Langley Reserve No. 3 (40.90 ha), Langley Reserve No. 4 (93.4 ha), Langley Reserve No. 5 (140.6 ha), McMillan Island Reserve No. 6 (191 ha), and Whonnock Reserve No. 1 (34.4 ha). The seventh reserve, *Pekw'Xe:Yles* (10.3 ha), is held in common with various other Stó:lō First Nations and located adjacent to Mission, to the north of Abbotsford on the north side of the Fraser River. Kwantlen's total registered population is 270 (70 members are living on Kwantlen reserves, 34 are living on other reserves, and 166 are living off-reserve).

Kwantlen is a party to the Stó:lō Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ. Kwantlen assert a traditional territory as identified in a 2016 Forest and Range Consultation and Revenue Sharing Agreement. The Stó:lō Nation has four representative bodies whose membership varies from group to group, which covers most Stó:lō First Nations when taken together. These representative bodies are: Stó:lō Nation, Stó:lō Tribal Council, Stó:lō Xwexwilmexw Treaty Association, and Ts'elxweyeqw Tribe Management. Kwantlen is a member of the Stó:lō Tribal Council. Additionally, fifteen Stó:lō Nations are registered as the Stó:lō Collective within the National Energy Board (NEB) Hearing Process; however, Kwantlen is not a member of this collective.

Kwantlen members traditionally speak the Downriver dialect of Hul'qumi'num, one of the Salishan family of languages.

### II- Preliminary Strength of Claim Assessment

- The proposed Project right-of-way (RoW) transects Kwantlen's asserted traditional territory from east of Abbotsford to near Burnaby. Approximately 59 kilometres (km) of the proposed pipeline and one pipeline facility (Port Kells Pump Station) would be located within Kwantlen's asserted traditional territory. The distance from the nearest Kwantlen community to the proposed Project's RoW is estimated at 2.77 km.
- Kwantlen has submitted written filings [Exhibits C198] including Oral Traditional Evidence [A63610, v.7] (and visual presentation [A4D2Y3]), Information Requests [A3W6Y3, A61520, A61797], and Written Evidence [A70270] with the NEB describing their asserted rights, customary law and governance objectives including cultural protection and the preservation of Aboriginal title within its asserted traditional territory.
- The Crown's preliminary assessment of Kwantlen's claims for Aboriginal rights over the section of the Project that spans from the north bank of the Fraser River east of Brunette River to Sumas Mountain ranges from weak to strong *prima facie* Aboriginal rights claims. The claim is strongest (i.e. strong) around the pipeline near Fort Langley and nearby areas of known use. The claim diminishes somewhat at the western edge, and diminishes more strongly in the east as the pipeline approaches Abbotsford.<sup>1</sup>

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<sup>1</sup> (ER) Kwantlen First Nation: Review of Anthropological and Historical Sources (Revised November 2010); (KEHR) Katzie First Nation: Review of Anthropological and Historical Sources (Revised November 2012).

- The Crown's initial assessment is that Kwantlen has a *prima facie* Aboriginal title claim ranging from weak to strong over the section of the Project that spans from the north bank of the Fraser River east of Brunette River to Sumas Mountain. The claim is strongest (i.e. strong) in proximity to Fort Langley and includes lands adjacent to the Salmon River. The claim diminishes the further the pipeline reaches in each direction, particularly east as it approaches Abbotsford.<sup>2</sup>

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

Given the nature and location of the Project, and the potential impacts of the Project on Kwantlen's Aboriginal Interests, the Crown is of the view that the legal duty to consult Kwantlen lies at the deeper end of the *Haida* consultation spectrum. Kwantlen was placed on Schedule B of the section 11 order issued by the Environmental Assessment Office (EAO), which affords Kwantlen opportunities to be consulted at a deeper level.

Kwantlen participated in the NEB review process as an intervenor and provided oral traditional evidence [A4D3V6], multiple rounds of information requests and written evidence (including confidential cultural heritage information), oral summary argument, and a written final argument. The Major Project Management Office's (MPMO) submitted an Information Request on June 22, 2015, inviting Kwantlen's feedback on the Crown's Issues Tracking Table; Kwantlen indicated that the request was not an appropriate means of consultation and that responding to the information request would further strain Kwantlen's resources [A4R4C6].

Kwantlen signed a contribution agreement with the NEB for \$40,000 in participant funding plus travel for two to the hearing. Kwantlen was allocated \$12,000 by the MPMO to facilitate their participation in Crown consultations after the close of the NEB hearing record. Kwantlen also signed a contribution agreement with the MPMO for additional funding in the amount of \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Total funding to Kwantlen from contribution agreements with the MPMO amounted to \$26,000.

On October 27, 2016 Kwantlen was provided with \$5,000 in capacity funding by EAO to assist with the consultation process.

Following the close of the NEB hearing record, Kwantlen met with the Crown consultation team on April 28, 2016 and September 28, 2016 to discuss the Project. The Crown provided a first draft of this Report to Kwantlen for review and comment on August 17, 2016. The Crown did not receive comments from Kwantlen on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 01, 2016, and Kwantlen provided comments on November 09, 2016 and November 14, 2016.

Kwantlen provided a separate Aboriginal group submission to the Crown on November 11, 2016.

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

The Crown gained its understanding of Kwantlen's issues and concerns through the community's intervention in the NEB hearing process and through direct engagement and consultation with the Crown, including meetings on April 28, 2016 and September 28, 2016. Kwantlen provided a significant volume of information through the NEB hearing process that was used by the Crown to develop an

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<sup>2</sup> Ibid.

Issues Tracking Table. This table was filed in the Information Request to Intervenor Round to solicit feedback from Kwantlen; their response to the information request further contributed to the Crown's understanding of Kwantlen's procedural concerns [A4R4C6]. In addition, the Crown has considered information regarding the proponent's engagement with Kwantlen, as described in the proponent's Aboriginal Engagement Report (July 2016). The Crown's understanding of Kwantlen's key Project-related issues and concerns are summarized below.

#### Methodology, Process and Consultation

Kwantlen stated that several barriers have prevented the group from meaningfully participating in the review of the Project. These barriers include process timelines, insufficient funding from the NEB and the Crown, constraints on funding (including disclosure requirements and stipulations), and a lack of technical expertise and funding to inform Kwantlen's comments on the draft NEB conditions. Kwantlen asserts that the NEB review process was flawed due to the lack of oral cross-examination, the inadequacy of information requests as a mechanism to answer questions from intervenors, and the lack of consultation on the scope of issues under consideration by the NEB. During Oral Summary Argument, Kwantlen's representative noted that they did not participate in the second round of information requests, citing time and resource constraints; moreover, they regarded the proponent's earlier responses to be incomplete. Overall, Kwantlen raised concerns about the adversarial nature of the process and found that the format of the NEB process was not conducive to Aboriginal participation.

Kwantlen expressed concerns with regard to the proponent's contributions to and participation in the NEB review process. Notably, Kwantlen filed a motion asserting that the proponent's responses to information requests were inadequate. Kwantlen also referred to proponent delays in submitting evidence related to Aboriginal Interests. Furthermore, Kwantlen found the attitude of the proponent when interacting with First Nations to be bullish and problematic.

Kwantlen expected the NEB to take a position on the impacts of the Project on Kwantlen's rights and title. Given that this kind of determination is outside of the NEB's mandate, and given other key concerns with the NEB review process, Kwantlen expressed a lack of trust that the NEB process will adequately address their key interests and concerns with respect to the Project. Kwantlen also raised concerns that the Crown has no statutory authority to place conditions on the proponent over and above the conditions recommended in the *NEB Recommendation Report*.

Kwantlen identified procedural concerns with respect to the Crown consultation process. For example, Kwantlen disagreed with the timing of the Crown's preliminary strength of claim analyses, which were conducted after the NEB process started. Moreover, Kwantlen stated they do not accept that the Crown can rely on the NEB process to discharge its consultation obligations.

Throughout the NEB review and Crown consultation processes, funding was a central issue for Kwantlen. Correspondence with the Crown and discussions in consultation meetings repeatedly referenced the capacity constraints that Kwantlen and other First Nations face. The NEB process, for instance, generates thousands of documents, many of which are technical in nature. As explained in the September 28, 2016 meeting between Crown officials and Kwantlen leadership, First Nations need to be able to retain technical experts and put forward evidence to the Board in order to meaningfully participate in the review and comment on NEB conditions. According to Kwantlen, not only was the \$40,000 that they received from the NEB wholly insufficient, but it also generated cynicism and a feeling of alienation from the process. Kwantlen has echoed these concerns in reference to funding allocations from the Crown. Kwantlen also questioned the NEB's methodology in determining funding allocations

across different Aboriginal intervenors in the NEB process. Kwantlen also indicated their view that insufficient time was allotted to Indigenous groups to address substantive issues associated with the Project.

Kwantlen noted that while external pressures from industry and the Province of Alberta make a decision to delay the Project a challenge, additional time is necessary to allow for the opportunity to adequately consult and accommodate.

#### Cultural and Social Impacts

Kwantlen has concerns regarding the impact the Project could have on 100 archeological sites in the Stave River area and on seasonal and permanent villages along the Salmon River. Building on these concerns, Kwantlen notes that additional archaeological studies are needed in order to identify other archaeological sites on or near the pipeline corridor, given that this area is historically important to local First Nations.

Kwantlen stated that the Project would negatively affect the spiritual and cultural connection that its members have with the Fraser River. Creation stories and the origins of the Kwantlen people (or "tireless runners" in Hul'qumi'num) are directly linked to this waterbody. Given the importance of the Fraser River in Kwantlen culture and spirituality, any impacts to the health of the river ecosystem and its salmon population could not be offset with compensation.

More broadly, Kwantlen notes that the Project would have adverse effects on cultural continuity (e.g. long house tradition), spiritual and physical health, and the overall well-being of the Kwantlen people. Ultimately, Kwantlen fear that youth and successive generations may lose their spiritual connection with the land as a result of the Project.

Impacts to the recreational use area (i.e. hiking trail and mountain bike park) located approximately 100m north of the existing pipeline RoW during construction are also of concern to Kwantlen.

#### Economic Impacts

Kwantlen drew attention to a lack of economic opportunities from the Project for Kwantlen members along with the negative impacts that Kwantlen believes the Project will have on local economies. Kwantlen further suggested that Indigenous groups with asserted Aboriginal title to the Project's footprint area should receive monies to reflect asserted rights to the economic benefit derived from the land.

Kwantlen suggested that the Project's employment, training and business opportunities lack definition and are unlikely to benefit the community in a substantial way. Similarly, as described in the proponent's Aboriginal Engagement Report, Kwantlen cites the lack of economic benefits for the use of lands within Kwantlen's traditional territory and the lack of compensation for disruptions to Kwantlen's traditional way of life as ongoing problems.

Given the environmental impacts of Project-related construction and/or a potential spill on aquatic resources and habitat, the Project could in turn have adverse impacts on subsistence harvesting within the Kwantlen community. For example, salmon are a critical source of country foods; any threat to salmon stocks negatively impacts the economic sustainability of Kwantlen members.

### Cumulative Effects

Kwantlen stated that earlier losses of their lands due to reserve creation, pre-emption, settlement and industrial growth (including an existing pipeline) have adversely impacted their use of their territory. While community members continue to hunt, they must also go farther afield than their ancestors did in order to find game due to development on the south side of the Fraser River. As one Kwantlen member explained, urban, agricultural, and industrial development has made it more difficult “to manifest, through our activities on the land, who we are as Kwantlen people and to pass that culture on to our young ones.”<sup>3</sup>

Meanwhile, Kwantlen fears that a spill of diluted bitumen or other heavy oil products into the Fraser River would pollute the waterway, reduce fish stocks, and damage habitat for many years.

Ultimately, Kwantlen is concerned about the irremediable and cumulative effects of the Project on cultural practices (e.g. long house tradition) and traditional land and resource use (TLRU) – particularly medicinal plant harvesting, hunting, and fishing.

Kwantlen highlighted legacy engagement issues with respect to the existing Trans Mountain Pipeline. In order to properly assess the cumulative effects of the Project (i.e. the proposed expansion), Kwantlen requested a thorough environmental assessment of the existing pipeline.

### Health and Human Safety

Kwantlen indicated that community harm and an increased sense of anxiety will result from the Project, given the adverse effects of a spill on the quality of lands and resources, the potential risks to Kwantlen’s hunting, fishing, and gathering practices, and the fear of irreparable damage to Kwantlen culture. Kwantlen is also concerned about the behaviour of diluted bitumen in the complex sediment and salinity regime present in the lower Fraser River.

### Impacts to Aboriginal Rights

Kwantlen has grave concerns about the impacts the Project will have on its hunting, fishing, and gathering rights. Fish and other aquatic species remain important to the community for sustenance and ceremonial purposes. With the loss of the ability to harvest some aquatic species, salmon has grown in importance for the Kwantlen People. As a result, impacts to fish and fish habitat are magnified in the case of salmon. Decreased access to fishing along with Fisheries and Oceans Canada’s (DFO) existing fishing restrictions further contribute to this concern.

The Project’s routing through the length of the Kwantlen territory and the lack of consultation on this routing demonstrate some of the ways in which the community’s Aboriginal rights have been impacted. Furthermore, Kwantlen raised concerns about the adverse impacts of an oil spill on its Aboriginal Interests, rights and title, as well as the level of compensation that would be made available in the event of a spill.

Kwantlen’s representative at Oral Summary Argument stated that evidence submitted by Kwantlen to the NEB establishes Kwantlen’s Aboriginal rights and Aboriginal title over tracts of land that fall within the pipeline corridor. In a meeting with Crown officials in April 2016, Kwantlen was concerned about the non-recognition of Kwantlen’s Aboriginal title to the Salmon River area. Kwantlen also indicated that the

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<sup>3</sup> Statement of Evidence of Brandon Gabriel, p. 4.

proponent had not considered the impacts of the Project on First Nations' (including Kwantlen). prospects for future uses of the land. Taken as a whole, Kwantlen indicated that the Project would result in the further alienation from their lands.

In the event of the Project's approval, Kwantlen requested to provide input into the routing and design of the Project and/or terms and conditions that respects and accommodates Kwantlen's Aboriginal title, rights and interests.

### Environmental Impacts

Kwantlen raised a number of environmental concerns relating to Project, including:

- The impacts of the Project on the terrestrial environment (including the Project crossing through Kwantlen territory) and waterways (including the Project crossing at Salmon River);
- The impacts of widening the existing right-of-way on wildlife habitat and vegetation – and the resulting implications for the species and plants that Kwantlen members traditionally hunt and harvest;
- The impacts of the Project on fish and fish habitat in the Salmon and Fraser Rivers, particularly in the context of declining fish stocks (e.g. sockeye salmon, steelhead, and sturgeon), riparian habitat loss, and increased water temperatures resulting from urban and industrial development in the region;
- The impacts of the oil sector on climate change, greenhouse gas emissions generated by the Project, and the implications of the Project for air quality; and
- The impacts of the Project on groundwater quality.

Many of these concerns relate to the Project construction phase as well as the risk of an oil spill.

### Accidents and Malfunctions

Kwantlen identified a number of ways in which a spill could impact them. Notably, a spill could contaminate lands and foul waterbodies where Kwantlen members exercise their rights to hunt, fish, and gather resources for subsistence and cultural purposes. Kwantlen fears that the ecological state of the Fraser River is fragile and that a spill would severely harm the river itself and the resources it supports. A spill could therefore result in cultural losses and interfere with Kwantlen's connection to the land. Lastly, Kwantlen raised concerns regarding the impact of a spill on aquifers and water sources used for drinking water and spiritual practices.

At the September 28, 2016, consultation meeting, Kwantlen emphasized that spill response planning and preparedness is of critical importance to Kwantlen. Specifically, Kwantlen needs to see detailed information on emergency management planning. While the NEB has required the release of proponent manuals and procedures related to emergency management, Kwantlen's concerns stem from the fact that intervenors did not have the ability to review and comment on the proponent's existing emergency management plans during the NEB hearings.

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

### ***Accommodation Proposals***

Kwantlen did not formally submit accommodation proposals to the Crown; however, Kwantlen has raised the following points:

- Kwantlen recommended that the NEB add a condition, requiring economic benefits for Kwantlen from the Project.
- Kwantlen stated their concern that existing spill response plans require greater detail, and proposed further consultation on the proponent's Emergency Management Program.
- Kwantlen suggested that Indigenous groups with asserted Aboriginal title to the Project's footprint area should receive monies to reflect asserted rights to the economic benefit derived from the land.
- Kwantlen also expressed their view that a commitment by the Crown to "design, fund and implement" an advisory committee is insufficient as an accommodation measure, particularly if such a committee is not the subject of substantial consultation prior to a decision relating to the Project.

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

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

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

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

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is 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), including by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Kwantlen's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Kwantlen'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 Kwantlen's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Kwantlen, Kwantlen's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant conditions proposed by the Province of any Environmental Assessment Certificate issued.

Kwantlen completed an independent, third-party traditional land use (TLU) study in November 2014

titled *A Cultural Heritage Overview Assessment of the Proposed Kinder Morgan Pipeline through Kwantlen Territory*. The report was filed confidentially to the NEB and included identification of traditional land uses in the segment of the proposed pipeline through Kwantlen territory. Kwantlen also conducted a third-party study titled *Cultural Heritage Sites Literature Review: Kwantlen Territory Knowledge Project* [A4L8J8 (redacted), A4L8J9 (redacted)] in 2011, which was filed as confidential written evidence to the NEB in May 2015. Although the study is not specific to the Project, it identifies current and historical TLU sites. In its Supplemental Technical Report [A4S7I7], the proponent estimated approximate distances and directions of sites from the Project's pipeline corridor, based on information in Kwantlen's confidential written evidence. Additional information for Kwantlen was presented in *Volume 5B* [A3S1S0] of the Project application.

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

Key resources harvested by Kwantlen traditionally include: deer, elk, mountain goats, beaver, marten, mushrooms, berries, and other plants for medicinal purposes. Harvesting of these resources continues to play an important role in Kwantlen culture, livelihood, and way of life.

Kwantlen identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts on wildlife habitat and vegetation and, in turn, impacts on traditional land and resource use (e.g. medicinal plant harvesting and hunting). 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, vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including species at risk-listed species). If the Project is approved, the NEB conditions 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 Kwantlen, the proponent would implement several mitigation measures to reduce potential effects to species important for Kwantlen's hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction of wildlife to the work site, minimize sensory disturbance and protect site-specific habitat features are outlined in the Project Environmental Protection Plan and the Wildlife Management Plans.

Kwantlen identified four trapping and seven plant gathering sites in their TLU study for the Project. Three of these sites are within the proposed pipeline corridor: one trapping site at West and Nathan Creeks, and two plant gathering sites located south of the Fraser River. Three plant gathering sites were identified within 2 km of the proposed pipeline corridor, while the remaining sites are more than 2 km away from the Project Area or the approximate distance from the Project Area was not stated in the TLU study. No hunting sites identified by Kwantlen in their TLU were located within the proposed pipeline corridor, although one site East of Fort Langley is located within 2 km of the proposed pipeline corridor.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Kwantlen's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown understands that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Kwantlen. If the Project is approved, the NEB conditions 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

Kwantlen, the proponent would implement several mitigation measures to reduce potential effects on TLU sites important for Kwantlen'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 disturbances to Kwantlen members accessing their traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction right-of-way, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Kwantlen prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Kwantlen to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Kwantlen 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 culturally significant species, Kwantlen ceremonial practices, and cultural continuity. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Kwantlen's hunting, trapping, and plant gathering activities. The Crown understands 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 footprint of the Project, could have spiritual and cultural impacts on community members. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). With regards to specific concerns raised by Kwantlen, the proponent would implement several mitigation measures to reduce potential effects to Kwantlen hunting, trapping, and plant gathering activities. The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups regarding the integration of 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 Kwantlen, Kwantlen's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Kwantlen'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 Kwantlen;
- Project-related pipeline and facility construction and routine maintenance activities within Kwantlen's traditional territory are temporary and thus, likely to cause minor disruptions to Kwantlen'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 Kwantlen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

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

Historically, Kwantlen community members fished for salmon, sturgeon, eulachon, trout, sucker, and whitefish, as well as harvested clams.

Kwantlen identified many concerns related to environmental effects of the Project on fishing activities. These concerns include potential negative impacts of the Project on fish stocks and other aquatic resources, fish habitat, the environmental integrity of waterbodies and riparian areas, and Kwantlen's harvesting opportunities (including subsistence harvesting for critical sources of country foods). As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish, 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. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Sections 4.3.2 and 4.3.3 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 Kwantlen, the proponent would implement several mitigation measures to reduce potential effects to species important for Kwantlen'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. The proponent has also 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.

The Fraser River is considered the backbone of Kwantlen culture, and there is a deep connection to the Salmon River. Kwantlen identified a total of six fishing sites in their TLU study, three of which are within the proposed pipeline corridor. These sites include Clayburn Creek (upper portion), the Nicomekl River and the Salmon River, and Sumas Lake. An additional fishing site at the mouth of the Coquitlam River was identified within 2 km of the proposed pipeline corridor, while the remaining sites are more than 2 km away from the Project Area or the approximate distance from the Project Area was not stated in the TLU study.

Kwantlen raised concerns with the Project's potential impacts on specific locations on or along key waterbodies, including the Salmon and Fraser Rivers. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Kwantlen's access to fishing activities. The Crown understands 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 Kwantlen community members. However, disruptions to access would largely be confined to the Project

footprint for the pipeline and associated facilities during construction and reclamation. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Kwantlen (Section 4.3.2 of this Report). With regards to specific concerns raised by Kwantlen, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Kwantlen's fishing activities. As previously discussed, the proponent is committed to minimizing disturbances to Kwantlen members accessing their traditional lands, as described in the Access Management Plan. The proponent committed to working with Kwantlen to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Kwantlen expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including the ability to share food resources, other cultural traditions, and cultural continuity. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Kwantlen's fishing activities. The Crown understands that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. If the Project is approved, the NEB conditions would either directly or indirectly reduce the potential effects on social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 and 4.3.3 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Kwantlen, Kwantlen's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on Kwantlen'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 Kwantlen;
- Project-related pipeline and facility construction and routine maintenance activities within Kwantlen's traditional territory are temporary and thus, likely to cause minor disruptions to Kwantlen'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 Kwantlen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

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

In their TLU study, Kwantlen identified a total of 30 sites for traditional and cultural practices sites including nine trails and/or travelways, 11 habitation sites, one gathering place, and nine sacred areas. The following three sites are located within the pipeline corridor: two trails/travelways at the mouth of the Chilliwack River and Crooked Creek, and; one habitation site at Salmon River. An additional five habitation sites and two sacred areas were identified within 2 km of the proposed pipeline corridor, while the remaining sites identified are more than 2 km away from the Project Area.

In their confidential written evidence filed with the NEB, Kwantlen identified one habitation site in New Westminster within the proposed pipeline corridor and another village site at Port Hammond within 2 km of the proposed pipeline. A burial ground known to exist at Qeqeyt was also identified within 2 km

of the proposed pipeline corridor in *Volume 5B* of the Project application. The historic settlement lies on the south bank of the Fraser River east of the Patullo Bridge.

Kwantlen identified concerns related to environmental effects of the Project on other traditional and cultural practices, including longhouse tradition, cultural continuity, and the spiritual and physical health of members. 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. If the Project is approved, the NEB conditions 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 Kwantlen, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Kwantlen'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 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.

Kwantlen raised concerns with the Project's potential impacts on 100 archaeological sites in the Stave River area, seasonal and permanent villages along the Salmon River, as well as the recreational use area north of the existing pipeline RoW. 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 understands that Kwantlen'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 Kwantlen's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. If the Project is approved, the NEB conditions 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 regarding the integration of traditional knowledge related to the location and construction of the Project.

Kwantlen 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 impacts on cultural continuity and the connection that Kwantlen members have with the Fraser River. As described previously, the Crown understands that Project-related activities may result in temporary interruptions to Kwantlen'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 Kwantlen, Kwantlen's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Kwantlen'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 Kwantlen's traditional and cultural practices;

- Project-related construction and routine maintenance activities within Kwantlen's traditional territory are temporary and thus, likely to cause minor disruptions to Kwantlen'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 Kwantlen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

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

The Crown has actively consulted with Kwantlen 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. Kwantlen's concerns related to Aboriginal title include:

- Impacts that could impede or disrupt Kwantlen's use of its asserted traditional territory, including disturbances to the land, alienation from the land, and a lack of compensation for disruptions to Kwantlen's use of the land;
- Activities that affect Kwantlen's ability to manage and make decisions over the Project area; and
- Project-related activities that affect Kwantlen's economic development aspirations for its traditional territory, including concerns related to Kwantlen's ability to derive economic benefits from the area impacted by the Project.

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, marine 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.

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 Kwantlen's asserted Aboriginal title to the proposed Project area.

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

Kwantlen expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the effects of a spill on the terrestrial and riparian environment, Kwantlen culture and connection to the land, as well as members' ability to exercise their Aboriginal rights.

The Crown also appreciates Kwantlen's concerns regarding spills, and the potential for a spill to impact Kwantlen'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 Kwantlen 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 Kwantlen's Aboriginal Interests and concerns raised by Kwantlen during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Kwantlen'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 are at greatest risk for adverse effects from an oil spill.<sup>4</sup>

## **VI - Conclusion**

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

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

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<sup>4</sup> Trans Mountain Final Argument, p. 85 and 207