

## Appendix B.1 – Lheidli T’enneh First Nation

### I - Background Information

Lheidli T’enneh First Nation (pronounced “*Klate-lee Ten-eh*”) is an Aboriginal group whose asserted traditional territory encompasses the areas surrounding and to the southeast of Prince George, British Columbia (BC). There are 421 registered Lheidli T’enneh members, of whom 116 live on Lheidli T’enneh’s reserves, 4 live on a different reserve, and 301 live off reserve. There are four Lheidli T’enneh reserves: *Clesbaoneecheck 3, Fort George 2, Fort George Cemetery 1A, and Salaquo 4.*

Lheidli T’enneh is currently in Stage 5 (Final Agreement) of the BC Treaty Process. In 2007, Lheidli T’enneh members narrowly voted to reject the Lheidli T’enneh Final Agreement. The band government is currently seeking feedback from members to find out why the agreement was rejected and may hold a new vote on ratification in the future.

Lheidli T’enneh is divided into four clans, the Frog, Grouse, Beaver and Bear. Lheidli T’enneh members traditionally spoke the Carrier language; it is unknown how many community members speak the language today.

### II - Preliminary Strength of Claim Assessment

- The project right of way (RoW) transects the Lheidli T’enneh’s asserted traditional territory in the extremity of its southeastern section in the upper headwaters of the Fraser River. The RoW runs approximately 75 kilometres (km) through Lheidli T’enneh’s asserted traditional territory, based on the Statement of Intent map filed as part of the BC Treaty process. The Hargreaves Trap Site, together with the Rearguard and Albreda Pump Stations appear to fall within this area. The RoW is 235 km away from the nearest Lheidli T’enneh community.
- The Crown's preliminary assessment of Lheidli T’enneh’s claim for Aboriginal rights ranges from a weak-to-moderate to moderate *prima facie* claim along the portion of the project route within Lheidli T’enneh’s asserted traditional territory. Areas at the upper end of this range (i.e. moderate) are those in proximity to the Fraser River. Evidence indicates that the ancestors of the Lheidli T’enneh made historic use of the area along the Fraser River at least as far south as the Rausch River. It can therefore be reasonably inferred that resources may have been harvested in the area encompassed by the route along the Fraser River<sup>1</sup>.
- The Crown's preliminary assessment of Lheidli T’enneh’s claim for Aboriginal title along the portion of the project route within their asserted territory is a weak *prima facie* claim. While it can be reasonably inferred that resources may have been harvested in the area encompassed by the project route along the Fraser River, this area is not considered to have been a core area for the ancestors of the Lheidli T’enneh. The evidence indicates that other Aboriginal groups made use of the project area at the time of contact and throughout the 19th century; therefore, any use of the area by the ancestors of the Lheidli T’enneh would not have been exclusive<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 Lheidli T’enneh’s Aboriginal Interests, the Crown is of the view that the legal duty to consult

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<sup>1</sup> Lheidli T’enneh: Review of Historical and Ethnographic Sources (BC Ministry of Justice and Attorney General, March 2013)

<sup>2</sup> Ibid.

Lheidli T'enneh lies at the low portion of the *Haida* consultation spectrum. In consideration of the project intersecting with Lheidli T'enneh's asserted traditional territory, Lheidli T'enneh was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Lheidli T'enneh opportunities to be consulted at a deeper level.

Lheidli T'enneh was moderately involved in the NEB process. They participated as an intervenor and provided oral traditional evidence; however, they did not submit written evidence or a final argument. Lheidli T'enneh replied to Natural Resources Canada's Issues Tracking Table information request ([A4Q8J1](#)) by further elaborating their concerns with respect to the project. The Crown has considered this information; however, as the response was sent as an email attachment it was not included on the NEB hearing record.

Lheidli T'enneh has engaged in minimal interactions with the Crown outside of the NEB process. They have sent one email to the Crown and met with the Crown consultation team on August 31, 2016.

Lheidli T'enneh signed a contribution agreement with the NEB for travel for two to the hearing. The Major Projects Management Office (MPMO) offered Lheidli T'enneh \$6,000 following the release of the *NEB Recommendation Report*. Lheidli T'enneh did not use this funding opportunity. EAO allocated \$5,000 to Lheidli T'enneh to support their participation in consultation activities on October 20, 2016.

The proponent indicated that they signed a confidential letter of understanding (LOU) with Lheidli T'enneh in January of 2013 that included capacity funding to support project engagement. Amendments were made to this LOU in June, 2013, and February, 2014.

A copy of this draft Consultation and Accommodation Report (Report) was sent to Aboriginal Groups on August 17, 2016 for review and comment. At the meeting with the Crown on August 31, 2016 Lheidli T'enneh indicated that they would review and provide comment on the draft Report and the *NEB Recommendation Report*; this information has not yet been received. 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 Lheidli T'enneh.

#### **IV - Summary of Key Lheidli T'enneh Issues and Concerns Raised**

The Crown has gained its understanding of Lheidli T'enneh's issues and concerns through Lheidli T'enneh's involvement in the NEB process, including the responses Lheidli T'enneh provided to Natural Resources Canada on its Information Request (IR) addressed to them, and through other engagement with the Crown. This is a summary of the key issues raised by Lheidli T'enneh, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Lheidli T'enneh's key project-related issues and concerns is summarized below.

##### **Methodology, Process, and Consultation**

Lheidli T'enneh does not consider the NEB process to be an appropriate or adequate means for the Crown to fulfill its duty to consult. They also expressed concern that they are not being treated as fairly as other Aboriginal Groups being consulted on the project. The Lheidli T'enneh is also of the view that the Crown's strength of claim (SoC) assessment may not be accurate as the Crown generally has insufficient evidence to make this determination. The Crown requested for Lheidli T'enneh to provide further detail and information to inform further reviews of SoC.

Lheidli T'enneh has concerns regarding the proponent consultation and engagement process, including historical grievances that they were not appropriately consulted on the TMX Anchor Loop project conducted in 2007. Lheidli T'enneh indicated that they do not wish to engage with the proponent due to because of these issues from previous engagement with Trans Mountain.

#### Impacts on Aboriginal Rights and Title Interests

Lheidli T'enneh asserts Aboriginal title over the entirety of their traditional territory, including the area crossed by the proposed pipeline corridor. They expressed concern that the project could have an adverse impact on Lheidli T'enneh members' ability to hunt, fish, trap, and harvest throughout their asserted traditional territory. Lheidli T'enneh has also highlighted the fact that the project could have a negative impact on their ability to manage the Upper Fraser River salmon fishery.

#### Environmental Impacts

Lheidli T'enneh has expressed several concerns related to environmental impacts including the potential for erosion caused by pipeline construction, wildlife displacement and potential effects on bears, mineral licks, squirrel caches, and on medicinal plants. In addition, Lheidli T'enneh is concerned about the project's pipeline crossing the Fraser River, potential impacts to the Fraser River fishery, including effects to White Sturgeon and fish spawning areas, noise pollution as a result of the project, potential impacts on fish of interest, including but not limited to, Dolly Varden char, trout, and salmon, and project disturbance of land, fish, and wildlife habitat, which could cause land alienation.

#### Accidents and Malfunctions:

Lheidli T'enneh has expressed deep concern about the potential impact of pipeline construction and operations on the Fraser River and its tributaries in the event of a spill. This includes potential impacts to fish and fish habitat with specific reference was made to potential adverse effects of a spill on water quality, food fisheries, and on the endangered White Sturgeon. Lheidli T'enneh is concerned about the proposed double crossing in the Rearguard region and the proposed pipeline expansion paralleling closely to the crossings and the effects it would have to the salmon run if a spill were to occur. Lheidli T'enneh is concerned that the safety technology used to detect pipe defects or leaks and spills is ineffective. Lheidli T'enneh is also concerned about the proponent's emergency response capability, especially in the remote and challenging areas of the Upper Fraser. They have expressed a desire for an emergency response team, preferably one that is Aboriginal, to be located on the Fraser River.

#### Human Health and Safety:

Lheidli T'enneh stated they are concerned that the construction and operation of the pipeline could have a negative impact on human health and safety.

#### **Accommodation Proposals**

Lheidli T'enneh proposed several accommodation and mitigation measures as part of the NEB review, proponent engagement, and Crown consultation:

- Proponent conduct additional studies so that Lheidli T'enneh can better understand fisheries and fisheries resources in the Upper Fraser, particularly with respect to White Sturgeon;
- Proponent provide information about spill modelling so that Lheidli T'enneh can better understand risks to their asserted Aboriginal rights and title;
- Proponent clarify plans on open cut crossing in the Rearguard Region of the Fraser River and moves the Rearguard compressor station to avoid the new crossing and place valves on either side of the Fraser River crossing; and

- Proponent remove existing open-cut crossing and explore additional drill options and crossing sites on the RoW on the south side of the Fraser River.

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 Lheidli T'enneh that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighing project costs and benefits with the impacts on Aboriginal Interests.

#### ***Lheidli T'enneh's Response to NEB Recommendation Report***

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

#### **V - Potential Impacts of the Project on Lheidli T'enneh's Aboriginal Interests**

A discussion of the Crown's assessment approach and understanding of the potential impacts of the project on Aboriginal Interests are provided in Sections 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

The discussion in this section focuses on potential impacts of the project on Lheidli T'enneh's Aboriginal Interests. These potential impacts are characterized by considering how the project could affect several factors important to Lheidli T'enneh'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 access and 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 Lheidli T'enneh's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Lheidli T'enneh, Lheidli T'enneh's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province.

Lheidli-T'enneh completed an independent, third-party traditional land use (TLU) study in 2013 titled *Interim Report – Lheidli T'enneh Traditional Use Study for Kinder Morgan's Trans Mountain Pipeline Expansion Proposal*. The study included a map review, community interviews and ground reconnaissance that focused on Crown lands within the asserted traditional territory of Lheidli T'enneh in the segment of the proposed pipeline from Hargreaves to Darfield. The study results are summarized in the Project Application ([A3S1S0](#), [A3S2H1](#), [A3Z4Z2](#)). Traditional land uses identified by Lheidli-T'enneh include hunting elk and moose, gathering plants, information on fishing sites, sacred sites, and gathering areas for community members.

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

As described in their TLU, Lheidli-T'enneh community members traditionally harvested animals including waterfowl, large carnivorous mammals, game birds, ungulates and small fur-bearing mammals for ceremonies, food and commercial purposes. Elk and Moose are commonly hunted. Traditionally harvested plant species include grasses, ferns, various berries (e.g., blueberry, raspberry, and soapberry), shrubs and tree species (e.g., alder, pine, fir and birch), and medicinal plants.

Lheidli T'enneh raised specific concerns related to environmental effects of the project on hunting, trapping, and plant gathering activities, including concerns around the displacement of wildlife, as well as impacts on bears, medicinal plants, mineral licks, and squirrel caches. 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). 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 Lheidli T'enneh, the proponent would implement several mitigation measures to reduce potential effects to species important for Lheidli T'enneh's hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP), and the vegetation and wildlife management plans. The proponent is also committed to meeting with Lheidli T'enneh to further discuss and address concerns, where possible, prior to the start of construction.

Lheidli T'enneh community members identified one hunting site, no trapping sites, and two plant gathering sites during the TLU for the project. The nearest hunting site is approximately 9 km east of the project's pipeline corridor in the general area around Mount Terry Fox. Two plant gathering sites, located at Valemont to Tête Jaune Cache and around Mount Robson, are located approximately 1.7 km east and 3.2 km northeast of the project's pipeline corridor, respectively. Community members also reported that the western part of Lheidli T'enneh traditional territory is most commonly hunted and the eastern area of Lheidli T'enneh traditional territory is currently used for general berry gathering. project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Lheidli T'enneh'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 Lheidli T'enneh. NEB conditions, if the project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to hunting, trapping, and gathering sites (section 4.3.1 of this Report). Further, the proponent would implement several mitigation measures to reduce potential effects on traditional land resource use sites, such as management plans that include access management, scheduling and notification of project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Lheidli T'enneh's traditional lands. The proponent is committed to minimizing the development of access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these

routes and determining appropriate construction reclamation. The proponent will work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Lheidli T'enneh prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Lheidli T'enneh to develop strategies to most effectively communicate the construction schedule and work areas to community members.

In consideration of the information available to the Crown from the NEB process, consultation with Lheidli T'enneh, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, project construction and routine maintenance activities during operation are expected to result in a negligible-to-minor impact on Lheidli T'enneh'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 Lheidli T'enneh;
- Project-related pipeline and facility construction and routine maintenance activities within Lheidli T'enneh's territory are temporary and thus, likely to cause minor disruptions to Lheidli T'enneh 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 Lheidli T'enneh regarding project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

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

As described in the TLU, salmon is an important food source and fishing has remained an important cultural tradition in the Lheidli T'enneh community, holding both social and ceremonial value. Other common freshwater species fished include whitefish, Dolly Varden, and rainbow trout.

Lheidli T'enneh noted that they manage fisheries stocks in the Fraser River, including the Bower, Willow, and McGregor tributaries. Their community members walk the streams and conduct fish counts and review of the fish spawning sites. A spill from the project would be devastating to the Lheidli T'enneh and the fish population upon which they still depend.

Lheidli T'enneh identified concerns related to environmental effects of the project on freshwater fishing activities, including potential adverse effects from the Project pipeline crossing the Fraser River, potential adverse effects on community members' ability to fish throughout their territory, and the potential negative impacts on Lheidli T'enneh's ability to manage the Upper Fraser River salmon fishery. As described in the *NEB Recommendation Report*, project-related construction and operation could result in low to moderate environmental 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 Lheidli T'enneh, the proponent would implement several mitigation measures to reduce potential effects to species important for Lheidli T'enneh'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.

Community members identified two fishing sites during the TLU study for the project, none of which are located within the proposed pipeline corridor. Two fishing sites, at the confluence of the Fraser River and McLennan River, and at the north end of Kinbasket Lake, are located approximately 5.4 km and 6.7 km from the proposed pipeline corridor, respectively.

Lheidli T'enneh identified concerns with the project's potential impacts relating to specific locations and access to freshwater fishing activities including potential effects of pipeline construction and operations on the Albreda River in the event of a spill, including the negative impact this would have on water quality and on the endangered White Sturgeon. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Lheidli T'enneh'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 Lheidli T'enneh community members. However, disruptions to access would largely be confined to the project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites (section 4.3.2 of this Report). As previously discussed, the proponent is committed to minimize disturbance to access to Lheidli T'enneh's traditional lands, as described in the Access Management Plan. The proponent is committed to working with Lheidli T'enneh to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Lheidli T'enneh expressed concern with direct and indirect effects of the project on social, cultural, spiritual, and experiential aspects of its fishing activities, including potential adverse effects on fish populations in the event of a spill, upon which Lheidli T'enneh relies for food. As described previously, the project construction and routine maintenance is expected to cause short-term, temporary disruptions to Lheidli T'enneh'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 avoid or reduce potential impacts on social, cultural, spiritual or experiential aspects of fishing activities (section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Lheidli T'enneh, Lheidli T'enneh's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, project construction and routine maintenance during operation are expected to result in a negligible impact on Lheidli T'enneh'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 Lheidli T'enneh;

- Project-related pipeline and facility construction and routine maintenance activities within Lheidli T'enneh traditional territory are temporary and thus, likely to cause minor disruptions to Lheidli T'enneh community members accessing traditional fishing sites within the project footprint, and negligible disruptions for sites that are not within the project footprint; and
- Concerns regarding project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

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

Lheidli T'enneh community members did not identify any trails and travelways or habitation sites during the TLU for the project. One gathering place identified near Moose Lake, approximately 18 km southeast of the project's pipeline corridor, was historically used as a meeting area with tribes east of the Rocky Mountains. One sacred area (cache pit) was identified in the Tête Jaune Cache area, approximately 3 km northwest of the proposed pipeline corridor.

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 important for Lheidli T'enneh's traditional and cultural practices (section 4.3.4). The proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources. 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.

In consideration of the information available to the Crown from the NEB process, consultation with Lheidli T'enneh, Lheidli T'enneh's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued, project construction and routine maintenance during operation are expected to result in a negligible impact on Lheidli T'enneh'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 operation activities are likely to have minor to moderate environmental effects on Lheidli T'enneh's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Lheidli T'enneh's traditional territory are temporary and thus, likely to cause minor disruptions to Lheidli T'enneh community members accessing traditional and cultural practice sites within the project footprint, and negligible disruptions for sites that are not within the project footprint; and
- Concerns regarding project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

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

The Crown has actively engaged with Lheidli T'enneh throughout the NEB and Crown consultation processes in an attempt to better identify, understand, and resolve concerns relating to the Aboriginal title. Concerns raised by Lheidli T'enneh related to Aboriginal title during the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Lheidli T'enneh's use of its asserted traditional territory, including pipeline construction and operation as well as potential spills;
- Potential adverse impacts on community members' ability to hunt, trap, and harvest throughout their territory; and
- Impacts that affect Lheidli T'enneh's ability to manage and make decisions over the project area, including management of the Upper Fraser River salmon fishery.

The Crown provides a description of the potential impacts of the project on Aboriginal title in section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the project is approved. The Crown understands that, in addition to NEB conditions that would require the proponent to report on heritage resources and traditional use investigations (NEB Conditions 97 and 100), the proponent has committed to meeting with Lheidli T'enneh prior to the start of construction to discuss and address concerns, where possible. The Crown notes that Lheidli T'enneh executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the project proceeds.

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, the project is expected to have negligible impacts on Lheidli T'enneh's asserted Aboriginal title to the proposed project area.

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

Lheidli T'enneh has expressed several concerns with direct and indirect effects of project-related pipeline spills on their Aboriginal Interests, particularly the potential impact of pipeline construction and operations on the Fraser River and its tributaries in the event of a spill. This includes potential impacts to fish and fish habitat with specific reference was made to potential adverse effects of a spill on water quality, food fisheries, and on the endangered White Sturgeon. Lheidli T'enneh First Nation is concerned that the safety technology used to detect pipe defects or leaks and spills is ineffective. Lheidli T'enneh is also concerned about the proponent's emergency response capability, especially in the remote and challenging areas of the Upper Fraser. Lheidli T'enneh is concerned about the proposed double crossing in the Rearguard region and the project's pipeline expansion paralleling closely to the crossings and the effects it would have to the salmon run if a spill were to occur. They have expressed a desire for an emergency response team, preferably one that is Aboriginal, to be located on the Fraser River. Finally, Lheidli T'enneh stated they are concerned that the construction and operation of the pipeline could have a negative impact on human health and safety.

The Crown understands Lheidli T'enneh's concerns regarding spills, and the potential for a spill to impact Lheidli T'enneh's use and occupation of their asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Lheidli T'enneh 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 Lheidli T'enneh's Aboriginal Interests and concerns raised by Lheidli T'enneh during the NEB process and Crown consultation process, a pipeline spill associated with the project could result in minor to serious impacts on Lheidli T'enneh's Aboriginal Interests. The Crown understands the numerous factors that would influence the severity and types of effects associated with a spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill<sup>3</sup>.

## **VI - Conclusions**

The Crown understands the project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. 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 Lheidli T'enneh's Aboriginal Interests would be up to negligible-to-minor.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Lheidli T'enneh's ongoing involvement and participation in 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 Lheidli T'enneh 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 Lheidli T'enneh, as discussed in Sections 4 and 5 of the main body of this Report.

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<sup>3</sup> Trans Mountain Final Argument, p. 85 and 207