

Appendix B.5 – Cook’s Ferry Indian Band

I - Background Information

Cook’s Ferry Indian Band (Cook’s Ferry) is part of the Nlaka’pamux (pronounced “*Ing-khla-kap-muh*”) people, whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops.

Cook’s Ferry has 25 reserves situated in the watersheds of the Thompson and Nicola Rivers. Cook’s Ferry’s registered population as of June 2016 was 349, with 53 members living on reserve. Cook’s Ferry may have been part of what was historically called NkamtcinEmux or Spences Bridge Band (of 15 village communities). Cook’s Ferry members historically spoke Nteʔkepmxcin, the language of the Nlaka’pamux, which falls into the Interior Salish language group. The [Report on the Status of B.C. First Nations Languages](#) [2014] states that amongst Nlaka’pamux people, 2.1% are fluent speakers, 5.5% have some level of skill with language, and 6% are learners.

Cook’s Ferry is a member of the Nicola Tribal Association which also includes: Siska Indian Band, Nicomen Indian Band, Shackan Indian Band, Nooaitch Indian Band, Coldwater Indian Band and Upper Nicola Band.

Cook’s Ferry is a party to the Nlaka’pamux Nation’s *Writ of Summons*, which was filed in the British Columbia (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, Kanaka Bar Indian Band, Lytton First Nation, Nicomen Indian Band, Nooaitch Indian Band, Shackan First Nation, Siska Indian Band, Skuppah Indian Band, and Spuzzum First Nation.

II - Preliminary Strength of Claim Assessment

- Cook’s Ferry is a member band of the Nlaka’pamux Nation. Approximately 226 kilometres (km) of the Project’s pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka’pamux’s asserted traditional territory. The distance from the RoW to the nearest Cook’s Ferry reserve (Antko 21) is approximately 475 m.
- 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 from a weak to strong *prima facie* claim. The areas assessed to have a strong *prima facie* claim 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.

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

Cook's Ferry did not participate in the National Energy Board (NEB) review process, and did not submit an application for funding to the NEB. Cook's Ferry 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). Cook's Ferry's engagement in consultation activities with the Crown began with correspondence in the post-NEB hearing phase and in meeting to discuss the Project as well as potential impacts on Cook's Ferry's Aboriginal Interests.

Cook's Ferry met with the Crown on October 13, 2016 to discuss the Project. During this meeting Cook's Ferry indicated that broadly speaking their interests had been brought forward during the NEB review process by the presentations of other associated indigenous groups.

The MPMO offered Cook's Ferry's \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Cook's Ferry's an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Cook's Ferry did

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

not use these funding opportunities. EAO provided Cook's Ferry with \$5,000 towards participation in the provincial environmental assessment process on October 20, 2016.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. Cook's Ferry provided comments on the first draft of this Report prior to the October 13, 2016 meeting. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016, and Cook's Ferry provided comments on November 8, 2016. The comments have been considered and addressed in this version of the Report. Cook's Ferry did not provide a separate Aboriginal group submission to the Crown.

IV - Summary of Key Cook's Ferry Issues and Concerns Raised

Cook's Ferry conducted a joint, third-party traditional land and resource use study entitled *Traditional Knowledge Project* along with Coldwater Indian Band, Siska Indian Band, and Boston Bar First Nation which was filed confidentially with the NEB. The Crown has gained its understanding of Cook's Ferry's issues and concerns through other engagement and correspondence with the Crown, including Cook's Ferry's comments on the draft Report which summarized the *Traditional Knowledge Project* study.

While little site-specific information was shared, the summary provides estimates of the number of hectares that would be impacted by the Project for each interest. The Crown's understanding of Cook's Ferry's key Project-related issues and concerns is summarized below. This is a summary of the key issues raised by Cook's Ferry, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions.

Methodology, Process and Consultation

Cook's Ferry stated that they did not participate in the NEB process due to their perceived bias of the NEB review. Cook's Ferry considered that the timeline imposed for responses to the draft Report and Appendix was restrictive and did not afford them sufficient time to review the documents against the *Traditional Knowledge Project* results. Cook's Ferry indicated that timelines in combination with limited resources do not allow them to meaningfully participate in the review process which would include advising all of their members on and off reserve, to achieve a full and informed community decision on the Project. Cook's Ferry stated that short timelines have resulted in a failure of the Crown to fulfill its obligation for deep and meaningful consultation and to accommodate Cook's Ferry Aboriginal rights including title.

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

Impacts on Aboriginal Rights and Title

Cook's Ferry raised concerns about economic impacts to activities such as hunting, trapping, and gathering that are integral to their social, economic, and cultural values and identities as Nlaka'pamux people. Cook's Ferry noted that the Project would create spatial and temporary impacts over 2,060 hectares (ha) (over 59% of the total Project area) of Cook's Ferry's hunting and trapping areas, and in 1,962 ha (over 56% of the total project area) in the traditional territory of their gathering and medicinal sites.

Cook's Ferry voiced concerns that the Project would result in impacts to environmental qualities including air, noise, water and soils. They were also concerned that Project activities could result in decreased numbers of animals including fur-bearer populations and plant populations which would, in turn, effect subsistence hunting and gathering.

Cook's Ferry raised a concern about economic impacts on fishing which is integral to their social, economic and cultural values and identities as Nlaka'pamux people. Cook's Ferry advised that they currently and historically relied on salmon and trout including Steelhead for food and it was a major economic driver across the territory. Interconnected with direct impacts to fish and fishing sites are concerns for impacts on fish habitat, groundwater, hydrology, water quality, and quantity from the Project. Cook's Ferry continues to have concerns about the severity of impacts from the Project on their people, their way of life, and the contribution to climate change.

Cook's Ferry asserts that the Crown has not accurately described the direct and indirect impacts of the Project on Cook's Ferry's Aboriginal rights, including title. Cook's Ferry's position is that they, as Nlaka'pamux people, have a strong *prima facie* claim to Aboriginal title and rights from Kamloops to Hope. Cook's Ferry said that land use is not restricted to reserves and that the entirety of the land base is used for traditional purposes.

Cook's Ferry stated that they have not been provided the risk register for the Project construction, operation and closure and therefore that they cannot meaningfully identify the potential impacts and infringements on their Aboriginal title and rights.

Cook's Ferry considered the current consultation timelines provided by the Crown to be arbitrarily short, unrealistic and unworkable, and as a result they were unable to identify, mitigate or accommodate potential impacts and infringements to their Aboriginal title and rights. Cook's Ferry asserts that the Crown and proponent have not mitigated any of the potential impacts identified by them in their Traditional Knowledge Project, the consultation meeting, or the review of the consultation record; nor have the proponent or Crown offered any ongoing process to address the impacts and infringements to Cook's Ferry's reserve lands, or Aboriginal title and rights.

Cook's Ferry requested that any Crown decision for the Project be delayed until such a time as their concerns are addressed through deep and meaningful consultation and accommodation with the Crown, and the implementation of processes and arrangements that allow them the opportunity to make an

informed decision, to participate in regulatory decision-making, and if Cook's Ferry support the Project, to benefit from the Project.

Cultural and Social Impacts

In addition to traditional and economic impacts from environmental changes, Cook's Ferry raised a concern about adverse cultural impacts to cultural places and resources including changes in access to areas of social, cultural and economic importance, known cultural and traditional sites, unidentified cultural and traditional sites, and archaeological sites.

Cook's Ferry stated that the Project would result in impacts that exceed 1,427 ha of land, including 40% of Tutelary (protection) sites, and would also impact spiritual and cultural places. Cook's Ferry identified 11 cultural survival area sites that they believe would be impacted by the Project's pipeline route, in addition to a watershed near Boston Bar, which is of cultural and spiritual importance for Cook's Ferry. Cook's Ferry requested that these cultural survival areas be formally protected for their continued practice of traditional activities and that the land be protected from development.

Cook's Ferry also noted that the Antko Reserve (#21), located approximately 475 m from the Project's pipeline corridor and 2 km south east of Merritt is the planned location of a 37-home subdivision (these are already fully serviced lots) and that six additional units would be built in time. This will be the largest reserve of housing for Cook's Ferry and will house members who currently live off-reserve for economic reasons. Cook's Ferry notes that the Project may impact on the perceived or real quality of homes planned to support Cook's Ferry.

Accidents and Malfunctions

Cook's Ferry expressed concern that an accident or malfunction of the pipeline could impact the environment and their fishing rights. Cook's Ferry identified four main rivers including the Coldwater River, the Nicola River, the Thompson River and the Fraser River which could be impacted by an accident or spill, although the Crown notes that the Nicole River, Thompson River and Fraser River are not on the pipeline corridor.

Cumulative Impacts

Cook's Ferry raised concerns about the adverse environmental impacts from land development and resource extraction within the Cook's Ferry's traditional territory. They explained that this concern has been expressed by Cook's Ferry members for decades. Specifically, oil and gas pipelines, mining, rail lines, roads, logging, transmission lines, highways, private and Crown land development, and leases contribute to cumulative effects within their territory.

Cook's Ferry expressed concerns that the existing pipeline created adverse effects to their way of life, culture, food and water and that they believe these concerns have not been addressed.

Accommodation Proposals

Cook's Ferry advised the Crown that accommodation should be undertaken by Provincial and Federal governments and by the proponent and clarified that broad Project-specific accommodations including a shared decision making relationship for the Nlaka'pamux territory is their long-term accommodation vision.

Cook's Ferry provided the federal and provincial Crown with proposed accommodation measures to consider in relation to accommodating potential impacts of the project on Cook's Ferry's Aboriginal Interests. Cook's Ferry requested high level accommodation measures of the Crown as follows:

- A reconciliation agreement;
- A benefits agreement for the pipeline;
- A revenue sharing agreement based on the net present value of property tax for the pipeline land lease and other methods for sharing of provincial revenue from the pipeline;
- A strategic engagement agreement to address proposed development and cumulative impacts; and
- A shared-decision making processes for land development and resource extraction in Nlaka'pamux territory which include joint regulatory management with Cook's Ferry and other Nlaka'pamux bands between both BC and Canada.

Cook's Ferry also requested the following Project-specific accommodation measures:

- An opportunity to discuss the impacts from the Project described in the "Traditional Knowledge Project for the Kinder Morgan Trans Mountain Pipeline Expansion Project" report prepared for Cook's Ferry by Esh-kn-am Cultural Resource Management Services Ltd. (September 2016), and a workable timeline to negotiate suitable accommodation with the Crown.
- An opportunity to negotiate protection of the 11 vital cultural survival areas for the Nlaka'pamux people that would be impacted by the Project.
- An opportunity to negotiate accommodation measures to avoid, lessen or mitigate environmental, cultural, social, and economic impact from the Project.
- An opportunity to negotiate accommodation measures to avoid, lessen or mitigate cumulative impacts including strategic engagement agreements and shared decision-making processes.
- An impact assessment study and steelhead management plan to provide for adequate mitigation measures to ensure their survival and recovery. While Cook's Ferry noted they have been working with other First Nations, the Province of BC, and Fisheries and Oceans Canada on this matter, Cook's Ferry requires an agreement with the Crown and the proponent for their participation.
- An agreement from the Crown and the proponent and participation in the development and implementation of mitigation measures concerning fish bearing water courses including: surveys, route walks, monitoring, and strategies to avoid, lessen or mitigate any interference or disturbance to fish and fish habitat during all phases of the pipeline.
- An agreement on monitoring the quality and quantity of water and environmental protection and provisions for the safe construction and operations of the existing and proposed pipeline.

- A water quality and quantity assessment of Coldwater River, Nicola River, Thompson River and Fraser River systems, and a joint management plan for the river systems health with the Crown and the proponent.
- Provincial accommodation in the following forms: Reconciliation Agreement, Benefits Agreement for the Pipeline; Revenue Sharing Agreement based on the Net Present Value of property tax for the pipeline land lease; and other methods for sharing of provincial revenue from the pipeline; New Legislative Scheme and Regulations for pipelines which include joint regulatory management with Cook's Ferry and other Nlaka'pamux bands; Strategic Engagement Agreement to address proposed development and cumulative impacts; and shared-decision making processes for land development and resource extraction. Cook's Ferry also requests Provincial protection of Cook's Ferry's cultural landscapes.
- Federal accommodation including processes for joint regulatory management to be negotiated and implemented with Canada. Other accommodation and mitigation measures to be discussed including benefits and revenue sharing. It is Cook's Ferry position that there should be a moratorium on oil and gas development and pipelines based on climate change commitments by Canada. If Canada approves this pipeline, then Cook's Ferry should be provided with significant investment in the renewable energy for their community. Cook's Ferry also requests Federal protection of Cook's Ferry's cultural landscapes.
- A participation agreement with Kinder Morgan to be negotiated and implemented regarding environmental, social, cultural, and economic measures with Cook's Ferry for the existing pipeline and the proposed expansion of the pipeline.
- Fossil fuel extraction and export authorizations should be linked to funding support for an Aboriginal group's (including Cook's Ferry) renewable initiatives, to offset climate change impacts from these activities.

Sections 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by Cook's Ferry 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.

V - Potential Impacts of the Project on Cook's Ferry'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 Cook's Ferry's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several

factors important to Cook's Ferry'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 Cook's Ferry's Aboriginal Interests considers information available to the Crown from consultation with Cook's Ferry, Cook's Ferry's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province.

Esh-kn-am Cultural Resource Management Services conducted a traditional land and resource use study, titled 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). The Traditional Knowledge Project was filed confidentially as evidence with the NEB. In November 2016, Cook's Ferry provided the *Traditional Knowledge Project* report to the Crown on the condition that it be used for the Project, and not be used for any other purpose. Cook's Ferry emphasized that the *Traditional Knowledge Project* 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 Cook's Ferry'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. Traditional land use (TLU) participants identified approximately 50 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. A number of traplines are registered to community members (e.g., individuals and families) and they continue to exercise their rights to trap throughout the territory. 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. 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.

Gathering berries, roots, plants and trees are an important activity of Cook's Ferry, 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.

Cook's Ferry identified several concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including that pipeline construction and operation within the Nlaka'pamux territory may directly and indirectly interfere with their Aboriginal right to hunt, trap and gather plants. Cook's Ferry voiced concerns that the Project would result in impacts to environmental qualities including air, noise, water and soils. They were also concerned that the Project activities could result in decreased numbers of animals including fur-bearer populations and plant populations which would, in turn, affect subsistence hunting and gathering. 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 Cook's Ferry, the proponent would implement several mitigation measures to reduce potential effects to species important for Cook's Ferry'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 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.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Cook's Ferry'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 Cook's Ferry. 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 Cook's Ferry, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Cook's Ferry'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 Cook's Ferry's 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 would be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Cook's Ferry prior to construction, the sites would be assessed, and appropriate mitigation measures would be determined. The proponent committed to working with Cook's Ferry to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Cook's Ferry 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 that adverse social and economic impacts to activities such as hunting, trapping and gathering which are integral to their social, economic and cultural values and identities would impede their ability to continue as Nlaka'pamux members. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Cook's Ferry'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 Cook's Ferry 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 Cook's Ferry'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 Cook's Ferry;
- 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 Cook's Ferry'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 Cook's Ferry 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). Presently, different types of salmon and trout are the most commonly fished species. Fish are a critical and important food source to Cook's Ferry, in particular salmon, steelhead and other trout species. During the TLU, participants 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. Cook's Ferry noted that important social, political and spiritual events take place during the spring and summer fishing gatherings, as they did historically.

Steelhead and other trout species are an important food source and of cultural significance to Cook's Ferry members. Cook's Ferry described steelhead as the "canary" in their territory, noting that it is a key food fish and of "extreme conservation concern". They voiced concerns that severe declines (starting in the 1970s) in salmon runs have already interfered with their food, sustenance, and ceremonial fisheries. Cook's Ferry said they are concerned that the Project's pipeline could further interfere with salmon spawning on the North Thompson, South Thompson and the Nicola Rivers and requested, similar to steelhead, that a salmon management plan be developed for all phases of the pipeline (construction, operation and closure). The objective of such a plan would be to impose mitigation measures to ensure steelhead's survival and recovery in the territory. Cook's Ferry identified many concerns related to environmental effects of the Project on fishing activities, including direct impacts on fish and fishing sites such as concerns for fish habitat, groundwater, hydrology, water quality and quantity and from the Project.

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

During the TLU, participants noted occurrences and impacts on 20 fish species in the Project area, in the waters of the Coldwater, Nicola and tributary rivers and streams. 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.

Cook's Ferry raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including that they are concerned that the Project pipeline could further interfere with salmon spawning on the North Thompson, South Thompson and the Nicola Rivers and requested, similar to steelhead, that a salmon management plan be developed for all phases of the pipeline (construction, operation and closure). Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Cook's Ferry'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 Cook's Ferry 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 Cook's Ferry (Section 4.3.2 of this Report). With regards to specific concerns raised by Cook's Ferry, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Cook's Ferry's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Cook's Ferry's traditional lands, as described in the Access Management Plan. The proponent committed to working with Cook's Ferry 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 consultation with Cook's Ferry, 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 Cook's Ferry'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 Cook's Ferry;
- 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 Cook's Ferry'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 Cook's Ferry 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 Cook's Ferry, 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 of 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 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.

Cook's Ferry identified concerns related to environmental effects of the Project on other traditional and cultural practices and requested that the Crown recognize ownership and uses in their Traditional territory. Further, Cook's Ferry requested that these cultural survival areas be formally protected for their continued practice of traditional activities and that the land not be made available for

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

development. 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 Cook's Ferry, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Cook's Ferry'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. Cook's Ferry also identified that there is a culturally and spiritually important watershed, near Boston Bar, outside of the Project footprint.

Cook's Ferry raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, including changes in access to areas of social, cultural and economic importance, known cultural and traditional sites, unidentified cultural and traditional sites and archaeological sites. Project-related activities are expected to cause short-term disruptions that temporarily affect the ability of Aboriginal groups to access land, waters or resources for traditional purposes. The Crown appreciates that Cook's Ferry'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 Cook's Ferry'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.

Cook's Ferry 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 Project impacts on water, as currently there isn't enough flow, temperatures are high and there are too many users. Cook's Ferry explained that they require water associated with water licenses for social, cultural and economic use by their members and their businesses and that any change to the quantity or quality of

water would have serious negative impacts on Cook's Ferry. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Cook's Ferry'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 Cook's Ferry, Cook's Ferry'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 Cook's Ferry'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 Cook's Ferry'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 Cook's Ferry'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 Cook's Ferry 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 Cook's Ferry 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. Cook's Ferry 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 Cook's Ferry throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Cook's Ferry throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Cook's Ferry's use of its asserted traditional territory, including access restrictions to resources and disruption of traditional activities resulting from cumulative effects to critical resources including water;
- Activities that affect Cook's Ferry's ability to manage and make decisions over the Project area, including reduced ability to pursue preservation objectives such as the protection of cultural survival areas; and

- Project-related activities that could affect Cook's Ferry's economic development aspirations for its asserted traditional territory, including reduced viability of fishing-based economy and impediments to a self-sustaining economy.

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 Cook's Ferry 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 Cook's Ferry's asserted Aboriginal title to the Project area.

Impacts Associated with Accidental Pipeline Spills

Cook's Ferry expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly water licenses and fisheries uses that could be impacted by an accidental spill into upstream rivers or Kamloops Lake. Cook's Ferry voiced a concern that an accident or malfunction of the pipeline could impact the environment and their fishing rights. Cook's Ferry explained that within Nlaka'pamux Territory, there are four main rivers including the Coldwater River, the Nicola River, the Thompson River and the Fraser River that could be impacted by an accident or spill. Cook's Ferry stated an accident or malfunction including an oil spill within the Nlaka'pamux territory, may directly and indirectly interfere with their Aboriginal right to hunt, trap and gather plants. Cook's Ferry are concerned that a catastrophic spill could impact areas supporting important cultural, spiritual, harvesting and hunting sites relied on by Cook's Ferry members.

The Crown also appreciates Cook's Ferry's concerns regarding spills, the potential for a spill to impact Cook's Ferry'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 Cook's Ferry 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 Cook's Ferry's Aboriginal Interests and concerns raised by Cook's Ferry during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Cook's Ferry'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 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 Cook's Ferry's Aboriginal Interests would be up to minor-to-moderate.

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

⁴ Trans Mountain Final Argument, p. 85 and 207