

## Appendix B.7 – Nicomen Indian Band

### I - Background Information

Nicomen Indian Band (Nicomen) is part of the Nlaka'pamux (pronounced "*Ing-khla-kap-muh*") Nation, whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. Nicomen's community is located near Lytton, BC, and has 16 reserves. The reserves are located in the lower Thompson Canyon. Nicomen's registered population as of April 2016 was 134, with 51 members living on reserve. Nicomen asserts that its members exercise Aboriginal rights throughout the Nlaka'pamux Nation's territory, including hunting, fishing, harvesting/medicine gathering. Nicomen members historically spoke the Nlaka'pamux language. Nicomen is affiliated with the Nicola Tribal Association.

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

### II - Preliminary Strength of Claim Assessment

- Nicomen is one of the Nlaka'pamux Nation bands. Approximately 226 kilometres (km) of the proposed pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka'pamux's asserted traditional territory.
- The RoW does not enter into the area Nicomen claims as its traditional territory in the 014 Forest and Range Consultation and Revenue Sharing Agreement between Nicomen and the Province of British Columbia. The nearest point to a Nicomen reserve is about 40 km from the RoW. It is understood that as a member band of the Nlaka'pamux Nation, Nicomen has requested consultation on this Project.
- 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 weak to strong *prima facie* claims. The areas assessed to have a strong *prima facie* claim are in the vicinity of the Nicola Valley, 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 areas of weaker (i.e. weak) claims are 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<sup>1</sup>.
- 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 weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker (i.e.

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

weak) 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 1846<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 Nicomen's Aboriginal Interests, the Crown is of the view that the legal duty to consult Nicomen lies at the middle portion of the *Haida* consultation spectrum. In consideration that the Project would not intersect with Nicomen's asserted traditional territory, Nicomen was placed on Schedule C of the Section 11 Order issued by the Environmental Assessment Office (EAO). The consultation that was provided to Nicomen is described in Section III of this appendix and is consistent with the middle portion of the *Haida* spectrum.

Nicomen did not participate in the National Energy Board (NEB) hearing process. However, Nicomen has been engaged in the Crown consultation process and met with the Crown consultation team on May 6 and September 19, 2016.

The Major Projects Management Office (MPMO) offered Nicomen \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Nicomen an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Nicomen signed a contribution agreement with the MPMO in response to the first offer, receiving a total of \$6,000 in allocated funding.

Nicomen signed a letter of support with the proponent on May 7, 2015, but have subsequently noted in a meeting that their support of the Project was based on a misunderstanding that they were entering into a training agreement, and that the decision was taken without community consultation or discussions with Nicomen Council.

The Crown provided a first draft of this Report to Nicomen for review and comment on August 17, 2016. The Crown did not receive comment from Nicomen on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Nicomen.

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

The Crown has drawn its understanding of the issues and concerns of Nicomen based on information brought forward at the May 6 and September 19, 2016 meetings, as well as KMC's *Supplemental Filing: Part 2 Aboriginal Engagement Report*. The Crown's understanding of Nicomen's key Project-related issues and concerns raised during the NEB process and during the Crown consultation meetings is summarized below. This is a summary of the key issues raised by Nicomen, 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.

#### *Review Process and Methodology*

Nicomen expressed that the available federal Participant Funding Program is inadequate given the scope of the proposed Project and its potential impacts on Nicomen's Aboriginal rights and title. Nicomen also

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<sup>2</sup> Ibid

noted the lack of clarity on the Crown consultation process, and concern that Nicomen's issues and concerns raised will be missed during the Cabinet Ministers' review prior to making a decision.

#### Environmental Impacts

In general, Nicomen is concerned that the Project will have a great effect on the environment and the proponent did not complete sufficient. Nicomen identified water quality and quantity, water flows, sedimentation, aquatic resources, and interconnection of waterways as a key issue due to Nicomen's strong connection to water. Nicomen is reliant on salmon in the rivers in the BC interior, and raised concerns regarding marine shipping and the effects on salmon.

Concerns were expressed about potential effects of construction activities (specifically noise) on wildlife, as well as overall effects to wildlife trails, wildlife habitat and fragmentation, and displacement of wildlife. Specifically, Nicomen raised concerns about increasing stress levels in ungulates that will affect calving season in the spring season, and species at risk (e.g., Great Horned Owl, American Badger, Lewis's Woodpecker, and Williamson's Sapsucker), and interruptions to migration patterns.

Other concerns were raised about potential cumulative environmental impacts on wildlife, marine and terrestrial ecosystems in their asserted traditional territory resulting from various projects. These concerns include the use of pesticides and herbicides along the Project's RoW corridor.

#### Cultural and Social Impacts

Nicomen expressed concerns regarding Project-related effects to medicinal plants, and sustenance effects on berry picking, particularly huckleberries and blueberries. There are traditional berry picking sites along the Coquihalla. Nicomen Indian Band is concerned about road construction and access where there never was access previously.

#### Impacts on Aboriginal Rights and Title

Concerns were raised over the expected influx of outsiders that would be brought into work on the Project (if approved) and potential impacts on Nicomen's ability to hunt, as well as over-hunting by non-Aboriginal hunters. Negative impacts on the natural environment (both terrestrial and marine) that could impede Nicomen's ability to hunt, fish, and gather food in their asserted traditional territory are of concern to Nicomen.

#### Accidents and Malfunctions

In general, Nicomen is concerned about the amount of product through the pipeline, the increase to potential hazards to health and environment, and impacts on water, air and land due to spills or breaks. Specifically, Nicomen expressed concern for the potential impacts to wildlife following a marine spill, the effectiveness of the Project's spill response regime, and overall concerns about Project safety (e.g. pipeline replacement procedures and safety protocols). Potential for mudslides and/or rockslide, and earthquake and seismic activity risk were also raised as concerns.

#### Other Concerns

Nicomen also expressed concerns about proposed mitigation measures, as Nicomen's experience with RoW management of past projects has created problems for Nicomen members. Nicomen also raised concerns about monitoring and requested that more First Nations participate in monitoring.

The Crown is in receipt of an open letter dated June 15, 2016, sent to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal

groups, including Nicomen. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

### ***Accommodation Proposals***

During the September 19, 2016 meeting, both Nicomen and the Crown noted some possible accommodation measures to address potential impacts of the Project on Nicomen Aboriginal Interests. The Crown noted a possible accommodation measure to form an oversight committee that would include an active and ongoing role for Aboriginal Groups. Nicomen expressed interest in this committee. The Crown also noted that the *NEB Recommendation Report* Conditions 66 to 70 could help to address some of Nicomen's concerns. Some proposed accommodations from Nicomen include:

- The proponent must clearly articulate and demonstrate the safety measures in the Project's construction and operation plans to the Nicomen community, with specific consideration to the risk of mudslides/rockslides;
- The proponent must outline how the Project conditions and commitment address Nicomen's concerns, and that Nicomen has an opportunity to review;
- Funding to support Aboriginal engagement and hiring of technical experts to review Project details and to ensure Nicomen's concerns have been addressed;
- Improved job training and economic opportunities for community members; and
- Increased and/or revitalized education and health care services in the community.

As summarized in the proponent's Aboriginal Engagement Report (July 2016):

- Nicomen requests the proponent increase riparian buffers.
- Nicomen recommends no access during construction (or a small amount of access) should take place during the calving season in the spring.
- Nicomen requests that construction does not take place during the nesting season May - August.
- Nicomen requests more studies on the effect of the Project on the native plants adjacent to the pipeline RoW, and that post-construction monitoring and data collection is required over 5 years. Nicomen requests this work and planning strategies involve the Nicola Tribal Association, Nicola Watershed Stewardship and Fisheries Authority.

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 Nicomen 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.

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

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

### **V - Potential Impacts of the Project on Nicomen'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 Nicomen's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Nicomen'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 Nicomen's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Nicomen, Nicomen'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.

Nicomen participated in a joint third-party traditional land and resource use (TLRU) study with Shackan Indian Band and Nooaitch Indian Band led by Nicola Tribal Association. The study, titled *Final Report: TmixW Research Traditional Land Use/Traditional Knowledge Study* was submitted to the proponent in September 2014. The Interim Report *TmixW Research Traditional Land Use/Traditional Knowledge Study*, was summarized in a Supplemental Technical Report submitted to the NEB by the proponent on July 21, 2014 (Filing IDs [A3Z4Z2 to A3Z4Z5](#)). The study identifies traditional land uses in the segment of the proposed pipeline from Black Pines to Hope. Traditional land uses identified by Nicola Tribal Association include hunting mammals and birds, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members and trails and travelways. None of the Aboriginal Interests identified by Nicola Tribal Association in the TLRU study overlap with the proposed pipeline corridor. In its Supplemental Technical Report ([A4F5D1](#)), the proponent estimated approximate distances and directions from the proposed pipeline corridor based on information in Nicola Tribal Association's report.

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

Nicola Tribal Association identified hunted species such as white-tailed and mule deer, moose, elk, beaver, marmot, rabbit, otter, brown and spruce grouse, geese, and duck. Nicola Tribal Association members also snare grouse and collect eggs from some migrating birds.

Nicomen identified several concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, to cumulative environmental impacts on wildlife and terrestrial ecosystems and the use of pesticides and herbicides. 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 Nicomen, the proponent would implement several mitigation measures to reduce potential effects to species important for Nicomen'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 committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

In their TLRU study for the Project, Nicola Tribal Association did not identify hunting or trapping or sites. One plant gathering site was identified in the Coquihalla and Coldwater areas; however the approximate distance from the Project Area was not stated in the TLRU study. No hunting, trapping or plant gathering sites were identified in the proposed pipeline corridor.

Nicomen raised concerns with the Project's potential impacts relating to specific locations and access on hunting, trapping, and plant gathering activities, including increased access affecting Nicomen's ability to hunt or gather berries, specifically berry picking sites along the Coquihalla. Project-related construction and routine maintenance is expected to cause short-term, temporary access disruptions to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. Access disruptions from construction and reclamation activities may result in a loss of harvesting opportunities within the Project footprint. 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).

With regards to specific concerns raised by Nicomen, the proponent would implement several mitigation measures to reduce potential effects on TLRU 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 access disturbance. The proponent is 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 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 Nicomen prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Nicomen to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Nicomen 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 sustenance effects due to Project impacts on berry picking. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions within the footprint of the Project. NEB conditions,

if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). The proponent has also committed to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Nicomen, Nicomen'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 negligible impact on Nicomen'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 cause low to moderate magnitude environmental effects on species associated with hunting, trapping, and plant gathering activities;
- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Nicomen's community members accessing traditional hunting, trapping and plant gathering sites that are not within the Project footprint;
- Concerns identified by Nicomen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities; and
- The Project would not intersect with Nicomen's asserted traditional territory.

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

Nicola Tribal Association members fish for numerous species including coho and Chinook salmon, trout, whitefish, sucker, and minnow.

Nicomen identified many concerns related to environmental effects of the Project on freshwater fishing activities, impacts on water quality and quantity, and in particular, impacts on coho salmon and habitat in the Coldwater River, and cumulative environmental impacts on freshwater ecosystems and the use of pesticides and herbicides. 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.

In their TLRU study for the Project, Nicola Tribal Association identified three fishing sites more than 2 km from the Project Area or the approximate distance from the Project Area was not stated in the study.

Nicomen raised concerns with the Project's potential impacts relating to specific locations and access to freshwater fishing activities, road construction in particular, and the creation of new access to areas where there was none previously. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to fishing activities, which 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). With regards to specific concerns raised by Nicomen, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Nicomen's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access, as described in the Access Management Plan. The proponent is committed to working with Nicomen to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Nicomen expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its freshwater fishing activities, in particular Nicomen's ability to fish. The interconnection of waterways is a key issue due to Nicomen's strong connection to water, and Nicomen is reliant on salmon in the rivers in the BC interior. As described previously, Project construction and routine maintenance is expected to cause short-term, temporary disruptions confined to the Project footprint. 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 Nicomen, Nicomen'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 negligible impact on Nicomen'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 cause low to moderate magnitude environmental effects on fish and fish habitat;
- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Nicomen's community members accessing traditional fishing sites that are not within the Project footprint;
- Concerns identified by Nicomen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities; and
- The Project would not intersect with Nicomen's asserted traditional territory.

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

As described in Section 4.3.4 of this 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). With regards to specific concerns raised by Nicomen, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources. The proponent has 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.

Nicola Tribal Association identified a total of four trails and travelways in their TLRU study, none of which are within the proposed pipeline corridor. One trail/travelway from Coquihalla Lake to Boston Bar Creek is within 2 km of the Project Area, while the remaining three sites identified by Nicola Tribal



Association are more than 2 km away from the Project Area or the approximate distance from the Project Area is unknown.

Nicomen raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, road construction in particular, and the creation of new access to areas where there was none previously. As described in Section 4.3.4 of this Report, 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. These disruptions 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.

Nicomen 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 the expected influx of outsiders brought in to work on the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Nicomen, Nicomen'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 negligible impact on Nicomen'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 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;
- Project-related pipeline and facility construction and routine maintenance activities are likely to cause negligible disruptions to Nicomen's community members accessing traditional and cultural sites that are not within the Project footprint;
- Concerns identified by Nicomen regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices; and
- The Project would not intersect with Nicomen's asserted traditional territory.

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

Nicomen expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly potential hazards to health and environment, potential impacts to wildlife following a marine spill, the effectiveness of the Project's spill response regime, and overall concerns about Project safety (e.g. pipeline replacement procedures and safety protocols).

The Crown also acknowledges Nicomen's concerns regarding spills, and the potential for a spill to impact Nicomen'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 Nicomen 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 Nicomen's Aboriginal Interests and concerns raised by Nicomen during the

NEB process and Crown consultation process, a pipeline spill associated with the Project could result in negligible to moderate impacts on Nicomen'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 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. 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 Nicomen Indian Band's Aboriginal Interests would be negligible.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Nicomen's ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Nicomen 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 Nicomen, as discussed in Sections 4 and 5 of the main body of this report.

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Nicomen. 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 if the Project proceeds.

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