

## Appendix B.10 – Coldwater Indian Band

### I - Background Information

The Coldwater Indian Band (Coldwater) 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. Coldwater holds three reserves situated near Merritt and/or the banks of the Coldwater River: Coldwater Indian Reserve no. 1 (1,838 hectares [ha]), Gwen Lake Indian Reserve no. 3 (17 ha) and Paul's Basin Indian Reserve no. 2 (646 ha). Coldwater's registered population is approximately 330 members living on Coldwater's reserve lands, 54 members living on other reserves and 455 living off reserve for a total registered population of 840.

Coldwater is part of what was historically called Cawa'xamux or Tcawa'xamux ("people of the creek"), or the Nicola section of the upper Nlaka'pamux peoples, originating from a number of Cawa'xamux village communities. The Nicola Athapaskan speaking people of this region (called by the Nlaka'pamux: Stuwixamux) lived in this vicinity during the early 19th century. Coldwater is a member of the Nicola Tribal Association which also includes: Siska Indian Band, Nicomen Indian Band, Shackan Indian Band, Nooaitch Indian Band, Cook's Ferry Indian Band and Upper Nicola Band. Coldwater members historically spoke Nlaka'pamux or the language of the Stuwixamux. The former is the language of the Nlaka'pamux people, which falls into the Interior Salish language group.

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

### II - Preliminary Strength of Claim Assessment

- Coldwater is one of the Nlaka'pamux Nation bands. Approximately 226 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. Coldwater Indian Reserve no. 1 is adjacent to the proposed pipeline RoW and will not be crossed by the Project; however, the existing Trans Mountain pipeline transects Coldwater Indian Reserve no. 1.
- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka'pamux territory, and there are some indications of Nlaka'pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka'pamux territory, and there is indication of an ancestral

connection between the Nlaka'pamux community who moved into the north end of Nicola Lake, intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim. The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka'pamux 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 of a weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 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 Coldwater's Aboriginal Interests, the Crown is of the view that the legal duty to consult Coldwater lies at the deeper end of the *Haida* consultation spectrum. Coldwater was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Coldwater opportunities to be consulted at a deeper level.

Coldwater was an active intervenor in the National Energy Board (NEB) review of the Project, and provided correspondence, information requests, oral traditional evidence, and written evidence, including confidential traditional land use information. Coldwater responded to Natural Resources Canada's Issues Tracking Table Information Request [\[A71235\]](#) by further elaborating their concerns, and provided written and oral summary argument to the NEB.

Coldwater has also corresponded actively with the Crown in respect of the proposed approach to consultation, NEB review process and the Project, and met with Crown officials on March 31, May 4, and October 7, 2016 to discuss these issues.

Coldwater signed a contribution agreement with the NEB for \$48,490 in participant funding, including travel for three to the hearing. The Major Projects Management Office (MPMO) offered Coldwater \$52,000 to support their participation in consultations. Coldwater signed contribution agreements with

---

<sup>1</sup> 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.

<sup>2</sup> Ibid.

the MPMO in response to both of these offers, for a total of \$26,000 in allocated funding. On October 14, 2016, Coldwater was issued \$5,000 in capacity funding by EAO to participate in consultation with the Crown.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. Coldwater provided comments on the first draft of this Report on September 19, 2016. These comments have been considered and addressed in this version of the Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016, and Coldwater provided comments on November 15, 2016. Comments included particular concerns with the Crown conclusions about impacts on Aboriginal rights and title. Coldwater also provided a separate Aboriginal group submission to the Crown on November 15, 2016.

#### **IV - Summary of Key Coldwater Interests and Concerns Raised**

The Crown has gained its understanding of Coldwater's Interests and concerns through Coldwater's involvement in the NEB process, including the responses Coldwater provided to Natural Resources Canada on its Information Request (IR) addressed to them, and through other engagement and correspondence with the Crown. The Crown's understanding of Coldwater's key Project-related issues and concerns is summarized below. This is a summary of the key issues raised by Coldwater, 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.

##### *Cultural and Social Impacts*

Coldwater has stated that every part of the Coldwater Valley, and larger Nlaka'pamux territory is of cultural and social importance to Coldwater members. Coldwater has communicated their position that any disturbance of their territory would have corresponding impacts on Coldwater members, and the cultural and social impacts of the Project would not be limited to Project impacts on creeks in Coldwater Indian Reserve No. 1. Coldwater also noted that climate change impacts are exacerbating impacts on water and changing water flow behavior.

Coldwater expressed concern that the Project would increase barriers to accessing traditional resources and practices, including plant harvesting, hunting and fishing; and sense of spiritual and cultural alienation on the land; and result in loss of lands and traditional resources, including but not limited to spiritually and culturally important sites such as Coldwater Creek and Kwinshatin Creek. Coldwater's oral traditional evidence identified the cultural, social and spiritual importance of water, providing examples of specific creeks and waters of importance in the Coldwater Valley. These included Coldwater Creek and Kwinshatin Creek, where there are a number of spiritual places, including burial sites and places where cradleboards have been hung, that may be impacted by the Project. Coldwater is concerned that the proponent's proposed mitigation (i.e., an environmental education program, intended to inform all construction personnel of the location of known sacred sites and burial sites) is inappropriate. Coldwater have requested that the proponent consult with them regarding cultural and social impacts of the Project, including the development of avoidance, mitigation and accommodation measures.

### Impacts from Existing Pipeline

Coldwater noted a lack of any accommodation or mitigative actions in relation to the existing pipeline. Coldwater's evidence recounts the Chief being forced to sign an agreement in respect of the existing pipeline in 1954, and concerns remain about the safety of the existing pipeline. Coldwater has expressed particular concern with the impact that a potential spill or leak would have on water resources and fish, which would impact all Aboriginal peoples in the territory from oil being carried down into the Fraser River from local waterways. Additionally, Coldwater noted that construction and clearing for the original pipeline led to a loss of berries, traditional medicines, and harvesting opportunities along the original RoW which have never fully recovered. Coldwater provided examples when community members were prevented from accessing their traditional berry picking grounds by Kinder Morgan employees doing maintenance work on the existing pipeline in the Coquihalla area. Coldwater found this particularly problematic because Kinder Morgan failed to notify Coldwater that they would be conducting work in their traditional territory, nor were the workers willing to disclose to community members what type of work they were conducting.

Coldwater stated that they have not been consulted on a 50,000 barrel per day increase in throughput of the existing pipeline and have serious concerns with expansion and potential ongoing and increasing risks associated with the existing pipeline on Coldwater's reserve. Coldwater have stated that both the existing pipeline and the proposed pipeline RoW pose risks to the aquifer that is the source of the domestic and agricultural water for their community.

Coldwater has also raised concerns over the seemingly disproportionate number of community members who have died from cancer and lupus, and wonder if these illnesses are related to the existing pipeline. Coldwater noted that the existing pipeline has leaked on the reserve on at least one occasion. There are additional concerns about whether or not a previously replaced section of pipeline was left in the ground or removed, and the status of remedial efforts to address potential soil contamination in this specific site.

### Methodology, Process and Consultation

Coldwater expressed deep concerns with the adequacy of the NEB process to ensure necessary information was before the Crown. Coldwater has raised numerous concerns with respect to the methodology used by the proponent to assess Project impacts. These concerns include, but are not limited to, whether the proponent has assessed Coldwater's strength of claim to Aboriginal rights and title as well as the potential adverse impacts from an oil or fuel spill on rights and title interests. Coldwater asked for clarification on how its Aboriginal traditional knowledge was used by the proponent in developing the Project application, what the methodology is for assessing potential adverse impacts on Coldwater's rights and title interests, and the mitigation measures proposed to address those impacts.

Coldwater has repeatedly stated that they have serious concerns with the Crown's consultation process and have requested a separate Coldwater-specific consultation process for meaningful consultation between Coldwater and the Crown. Concerns include a lack of consultation regarding the Equivalency

Agreement, EAO's decision to accept the NEB Recommendation Report as the assessment report and insufficient funding to participate in the provincial process for the Project.

Coldwater expressed frustration that Coldwater had not had an opportunity to meet with decision makers on the Project. Coldwater indicated that it does not feel that their concerns have been taken seriously as part of the NEB process, or by Natural Resources Canada and the EAO following the close of the NEB hearings. Coldwater is seeking to engage in government-to-government dialogue to find solutions to the impact of the Project on Coldwater's rights, but stated they have not yet had this opportunity. Coldwater are concerned that they have not received a substantive Crown response to Coldwater's concerns with the NEB process or lack of appropriate assessment and information required to inform consultation. Coldwater remains frustrated, and hold the view that the timeline for Crown consultation should be extended to provide time for the gathering of critical information and analyses needed to inform consultation and ultimately to inform the Crown's decision on the Project.

Coldwater formally requested that the Crown recommend that the Governor in Council (GIC) either dismiss the Project as proposed or refer the NEB's recommendation back for reconsideration with clear direction that a complete analysis of Project routing in the Coldwater Valley, including with respect to relocating the existing pipeline be undertaken.

#### Cumulative Effects

Coldwater has noted that the cumulative effect of the Project on their rights and title interests has not been considered in a manner they can agree with. Coldwater stated in evidence that the Nlaka'pamux territory has been subject to extensive development since Europeans first came to the territory and that the result has been a steady degradation of Coldwater's rights and title interests. Major industrial developments of particular impact noted by Coldwater include the construction and operation of the Coquihalla highway and the existing Trans Mountain pipeline, both of which are large linear disturbances which limit the ability of Coldwater members to use the territory and alienated a significant portion of the Nlaka'pamux territory. Coldwater's view is that the Project must be considered against a pre-industrial baseline, and that a full cumulative impacts assessment should be undertaken that takes into account the historical context within which Coldwater exercise their rights and title interests within their traditional territory.

#### Environmental Impacts

Coldwater expressed concern about the following environmental issues: the potential impacts of the Project on water resources in the territory (groundwater contamination, water scarcity, and loss of drinking water), loss of plants and medicine resources relied on by Coldwater members, and potential impacts on a wide variety of wildlife species (which are noted as having direct impacts on Coldwater rights and interests). Risks to Coldwater's lands and marine and freshwater resources that are important to salmon in the Fraser River were also raised as concerns.

Coldwater expressed interest to the proponent in developing a reclamation and management plan in consultation with Coldwater specific to potential Project impacts to Coldwater, and targeted and specific

consultation with Coldwater to develop appropriate avoidance, mitigation and accommodation of potential Project impacts to wildlife. Coldwater also requested the proponent consult with Coldwater and other impacted Aboriginal groups on land reclamation within Nlaka'pamux Territory, and fully fund Coldwater to participate in restoration and monitoring activities for the life of the Project.

#### Coldwater's Groundwater Resources

Coldwater expressed deep concern about the assessment of impacts, including a lack of assessment of route alternatives in the Coldwater Valley that would avoid risk to the aquifer (e.g., West Alternative Route), and a lack of understanding and assessment of the potential environmental, health, and social effects on groundwater in the Coldwater Valley.

The NEB denied Coldwater's request to undertake a complete reanalysis of Project routing through the Coldwater Valley. Coldwater is of the view that there are alternative routes that do not put their drinking water supply at risk, and that neither the alternative routes nor the impacts of the Project on their water supply have been adequately considered. Coldwater expressed that this is evidenced by the current uncertainty as to the extent of the aquifer and the NEB Condition 39 that requires the proponent undertake a hydrogeological study to determine the extent of the aquifer. Coldwater are concerned that the study must be filed only six months prior to construction in the Coldwater Valley, and that this may mean that this is not the practical opportunity to consider rerouting.

Coldwater stated that, to date, the Crown has failed to provide any meaningful feedback or response to their most serious concerns that the impacts of the various Project routes through the Coldwater Valley have not yet been considered or understood, and the information needed to inform this assessment has not been gathered. Coldwater consider this assessment, which includes an assessment of impact of the proponent's preferred Project route, critical to meaningful consultation and appropriate accommodation. Coldwater stated the honour of the Crown cannot be met by reliance on the anticipated provision of a study to the NEB and EAO six months prior to the commencement of construction.

Coldwater raised concerns that the proponent did not consult them regarding the removal of the various corridor options from consideration in the Project application and that in their view the West Alternative could be a better option based on the potential effects to the aquifer on which Coldwater rely for water, as well as Coldwater's rights and its overall quality of life and sense of well-being. Coldwater stated that the West Alternative Route had not been fully considered or analyzed, and the route would significantly reduce risks and impacts to the community, its reserve lands, and to the aquifer that supplies approximately 90% of the water used by Coldwater community members. Coldwater specifically noted that Project routing and mitigation measures could be taken to avoid impacts to their drinking water supply.

Coldwater commissioned a third-party study, submitted to the Crown consultation team in September 2016, which outlined the serious concerns Coldwater has with the proposed project routing. While Coldwater does not necessarily consider the West Alternative as the solution to their concerns,

Coldwater suggested that the alternative route is one way to accommodate Coldwater and reduce the impacts and risks of the Project on Coldwater. Coldwater expressed its concern that, given the momentum behind the Project following a GIC approval, it would take a major adverse finding in the NEB Condition 39 report for the West Alternative to become a viable consideration. Coldwater also stated that they do not consider a detailed route hearing as a viable option for addressing Coldwater's serious concerns about Project routing, and in particular around avoiding risk to the Coldwater aquifer.

Coldwater noted that recent engagement with the proponent has not been productive and has confirmed the Crown's critical role. Coldwater raised concerns that the West Alternative route, which Coldwater has been urging the Crown to study, while technically feasible, is no longer a routing option. Coldwater emphasized that the proponent's commitment "to meeting with Coldwater prior to the start of construction to discuss avoiding, mitigating, and accommodating potential effects associated with routing through the Coldwater Valley" must be considered in this context. Coldwater indicated that the proponent has refused to undertake a detailed analysis of the impacts of routing options through the Coldwater Valley, and stated the proponent did not consider impacts on Aboriginal Interests in their routing analysis.

Coldwater stated that the hydrogeological study must be considered by the GIC before a final decision on the Project is made, and routing options and complete knowledge of risk and impacts of the Project on Coldwater must be dealt with in advance of any decision by the GIC to approve the Project. Coldwater emphasized that their concerns are too critical to be left to a process from which the Crown representatives charged with discharging duty to consult are absent and which will occur after the Project has gained significant momentum and may already be under construction. Coldwater indicated that the Crown has an opportunity and a responsibility to ensure that these concerns are addressed in advance of a final decision on the Project. Coldwater remains critically concerned about the impacts of the Project on Coldwater's Aboriginal Interests.

Coldwater formally requested that the GIC either dismiss the Project as proposed or refer the NEB's recommendation back for reconsideration with clear direction that a complete reanalysis of Project routing in the Coldwater Valley occur, including consideration of a hydrogeological study of the aquifer and potential impacts of the Project on Coldwater's water supply.

The Crown has considered these concerns, including reviewing the hydrogeological study, and responded in meetings and correspondence. These concerns have informed the development of incremental conditions proposed by EAO regarding both the Coldwater aquifer and the provision of drinking water in the case of contamination.

#### *Health and Human Safety*

Coldwater raised concern about the potential for spills to impact critical groundwater resources, and the associated adverse effects a spill would cause to Coldwater members' health and cultural well-being. Specifically, Coldwater expressed concern about the impacts of a pipeline rupture or spill uphill from Coldwater Indian Reserve No.1 and the potential anxiety that Coldwater community members could

experience from the real and perceived consequences of such a spill. Concerns were also raised related to the potential impact of a system failure resulting in an oil spill on Nlaka'pamux lands, including sensitive areas, wildlife habitat and fresh water aquatic habitat such as the Coldwater, Nicola, Thompson and Fraser Rivers. Further, Coldwater identified concerns related to spill prevention and the capabilities of the proponent to effectively respond. Coldwater is not aware of information from the proponent that would establish that the spill response measures proposed are practicable and effective. Coldwater states that this information should be considered by the Crown before a decision on the Project is made, and such critical issues cannot be delayed until after Project approval is in place.

Coldwater expressed serious concerns about the safety risks posed by the Project, including the use of pesticides to control invasive and other plant species. Community members continue to harvest suwetta and other country foods along the existing pipeline route.

#### Impacts on Aboriginal Rights and Title

It is the strong view of Coldwater that the Project would result in significant adverse impacts on Coldwater's Aboriginal rights and title interests. Coldwater has stated its concerns about the impact of the Project on the full suite of Nlaka'pamux rights and title interests, including the economic component of Aboriginal title and the transmission of Nlaka'pamux culture and language to the next generation. Coldwater is concerned that the Project could affect Coldwater's mission to enhance and sustain their quality of life through wellness and culture, and to utilize and preserve all of Coldwater's' resources for now and future generations.

They state there has been no meaningful assessment of Project impacts on Coldwater's traditional practices. Coldwater requested a full assessment of the Project's potential impacts on Coldwater traditional land uses in order to determine appropriate measures to avoid, mitigate or accommodate impacts on Coldwater. They deem the proponent's mitigation measures to be deficient. It is of Coldwater's view that the consent of Coldwater should be secured before the Crown authorizes the Project to proceed (if such action is taken) based on their asserted claim to Aboriginal title over the lands impacted by the Project (as part of the Nlaka'pamux Nation).

#### Economic Impacts

Before authorizing the Project to proceed, Coldwater is of the view that the Crown should secure the consent of Coldwater, including negotiating a share in any economic benefits stemming from the Project.

#### Project Construction Phase

Coldwater raised concerns with respect to the impacts of constructing the pipeline adjacent to the reserve and across their traditional territory, including effects of construction on groundwater and surface water, the location of the Project and taking-up of lands, the social, cultural, spiritual and economic impacts of constructing the Project through the territory, and safety risks posed by Project construction.

### ***Accommodation Proposals***

During Crown consultation, Coldwater stated that Project impacts on their rights need to be assessed, and mitigation measures identified before Coldwater would be in a position to discuss accommodation. Coldwater provided the federal and provincial Crown with two proposed accommodation measures to consider in relation to accommodating potential impacts of the Project on Coldwater's Aboriginal Interests:

- The GIC should direct the NEB to dismiss the proponent's application pursuant to s. 54(1)(b) of the *National Energy Board Act*; or
- The GIC should refer the *NEB Recommendation Report* back for reconsideration pursuant to s.53(1) of the *National Energy Board Act* with clear direction to assess the impacts of the Project on Coldwater's unique rights and interests, including a complete re-analysis of Project routing through the Coldwater Valley and an examination of the proposed routes included in the proponents' original application. The reanalysis should be required to: consider a hydrogeological study of Coldwater's aquifer to be conducted in cooperation with Coldwater; determine which Project route will minimize impacts on their Aboriginal rights and Interests; and consider whether relocating the existing pipeline route off of Coldwater reserve no.1 is feasible.

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 Coldwater 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.

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

Coldwater communicated to the Crown that the *NEB Recommendation Report* failed to identify or assess the Project impacts on Coldwater's rights and title interests. Coldwater stated that while the *NEB Recommendation Report* generally acknowledged Coldwater's concerns with routing through the Coldwater Valley, it did not draw any conclusions about the adequacy or appropriateness of routing through the Valley. Coldwater expressed strong concern that the NEB process and report did not consider the West Alternative Project route because the proponent removed the route option early in the process.

According to Coldwater, NEB Condition 39 (requiring a hydrological study of Coldwater IR No. 1 to identify the nature and extent of the aquifer) appears to be an acknowledgement of deficiencies in the proponent's routing assessment, but the condition did not provide any mechanisms to address problems with routing selection, as the study is to be filed only after Project approval. It is unclear to Coldwater whether NEB Condition 130 (requiring groundwater monitoring program) will be required for Coldwater's aquifer as the proponent has yet to determine whether it is a "vulnerable aquifer". Coldwater stated that NEB Condition 93 (requiring a water well inventory of wells within 150 m of the pipeline ROW) does not account for the existing pipeline or potential water quality and quantity impacts beyond the ROW, and does not require the proponent to be informed or confirmed by local water users.

Coldwater is concerned that NEB Condition 93 does not establish thresholds and triggers for when water wells must be replaced due to adverse impacts from the Project.

Coldwater identified fundamental issues with conditions in the *NEB Recommendation Report*, none of which they believe would provide final or binding conditions on Project approval that guarantee impacts to Coldwater's rights will be avoided, mitigated or accommodated.

The Crown is of the view that routing options had been appropriately considered by the NEB through the hearing process and that further routing refinements may occur through the routing process, if the project is approved. The Crown is also of the view that the conditions imposed by the NEB and proposed by the EAO would provide for incremental and reasonable mitigation of effects and risk posed by the Project.

#### **V - Potential Impacts of the Project on Coldwater'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 or established 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 Coldwater's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Coldwater'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 Coldwater's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Coldwater, Coldwater's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province.

Esh-kn-am Cultural Resource Management Services conducted a joint, third-party traditional land and resource use study, the *Traditional Knowledge Project for the Kinder Morgan Trans Mountain Pipeline Expansion Project* (the Traditional Knowledge Project) for Coldwater Indian Band, Cook's Ferry Indian Band, Siska Indian Band, and Boston Bar First Nation (participating bands). The Traditional Knowledge Project was filed confidentially with the NEB. In November 2016, the *Traditional Knowledge*

*Project* report was provided to the Crown on the condition that it be used for the Project, and not be used for any other purpose, and that it is a small sampling of Aboriginal rights practitioners due to time and budget constraints and is not a definitive study on the use of Aboriginal title lands or the practice of Aboriginal rights by the participating bands. The report includes site-specific information and estimates of the number of hectares that may be directly or indirectly impacted by the Project. The Crown has relied on this information to assess potential impacts of the Project on Coldwater's Aboriginal Interests.

Coldwater submitted written evidence to the NEB in 2015 ([A4Q0W6](#)) that describes the history of Coldwater, the history of the Trans Mountain pipeline through Coldwater's reserve, impacts of the Project on Coldwater's Interests, and Project routing. The evidence also includes several appendices including Nlaka'pamux Area of Interest, a redacted ethnographic and traditional use study titled *Coldwater Indian Band: Preliminary Ethnographic and Historic Overview and Traditional Use Study* ([A4L9Q0](#)) and a redacted traditional land use and traditional knowledge study prepared by Esh-kn-am Cultural Resources Management Services titled *Coldwater Indian Band Traditional Land Use and Traditional Knowledge Study of Coldwater IR #1 for the Proposed Trans Mountain Expansion Project* ([A4Q0X1](#)), as well as a hydrogeology study titled *Hydrogeologic Overview of the Area Surrounding the Trans Mountain Pipeline Expansion* ([A4Q0W9](#), [A4Q0X0](#)), among other appendices. In the *Coldwater Indian Band: Preliminary Ethnographic and Historic Overview and Traditional Use Study*, Coldwater Nlaka'pamux Knowledge Holders and Resource Users identified a total of 175 traditional use sites for harvesting resources for materials, food, medicine, and cultural purposes in the study area<sup>3</sup>. Many resources and traditional areas identified by Coldwater along the Coldwater River and in the Nicola Valley are used by community members as part of a seasonal round.

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

According to Coldwater's written evidence, community members continue to rely heavily on deer, elk, moose, berries and plants, medicines and materials. Coldwater identified 32 hunting sites and 101 berry/plant gathering sites in the evidence submission. Specific species hunted by Coldwater community members include: beaver, deer, mule deer, white-tailed deer, ducks, elk, goose, grouse, blue grouse, spruce grouse, moose, rabbit and squirrel. Coldwater identified the following plant species gathered by community members: alder, balsamroot, gooseberries, huckleberries, Saskatoon berries, soapberries, wild raspberries, wild strawberries, birch bark, bitterroot, cedar, chokecherries, cottonwood, fir boughs, fir tree bark, Indian carrot, Indian celery, Indian potato, Indian rhubarb, juniper, Labrador tea, lodgepole pine sap, medicinal plant, various mushrooms including cottonwood, pine, sand, shaggy mane, spring, thunder, as well as other species such as Oregon grape, pine cone seeds, red willow, rosehips, stinging nettle, trapper's tea, tree needles, wild onions, and willow sticks.

Coldwater identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including loss of berries, traditional medicines, and harvesting

---

<sup>3</sup> According to Coldwater, the study area is centred on the Nicola and Coldwater Valley watersheds and roughly covers the territory of the Nicola division of the Nlaka'pamux.

opportunities, loss of plants and medicinal resources relied on by Coldwater members, and impacts on a wide variety of wildlife species. 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 Coldwater, the proponent would implement several mitigation measures to reduce potential effects to species important for Coldwater'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 Wildlife Management Plans.

Community members rely heavily on resources located on the sides and bottom of the Coldwater Valley due to its proximity to Coldwater Reserve No. 1. Other areas of consistent use identified by community members in Coldwater's evidence include Coquihalla Summit and Lakes area, the Spius Creek and Stoyoma Mountain area, Boss Lake and Davis Lake area, Minnie Lake, Aspen Grove, and Nicola Lake. Mushroom collecting is concentrated along the Coldwater River, as well as in the Aspen Grove and Minnie Lake areas south of Nicola Lake. 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.

Coldwater raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including increased barriers to accessing traditional resources and practices, such as plant harvesting and hunting, and potential impacts of increased access to the land by members of the public. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Coldwater'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 Coldwater. 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 Coldwater, the proponent would implement several mitigation measures to reduce potential effects on traditional land resource use (TLRU) sites important for Coldwater'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 Coldwater'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 will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Coldwater prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Coldwater to develop strategies to most effectively communicate the construction schedule and work areas to community members. Further, the proponent has committed to meeting with Coldwater prior to the start of construction to discuss avoiding, mitigating, and accommodating potential effects associated with routing through the Coldwater Valley.

Coldwater 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 a sense of spiritual and cultural alienation on the land, impacts to human health from the use of pesticides to control invasive and other plant species, particularly impacts to community members that harvest country foods. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Coldwater'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).

With regards to specific concerns raised by Coldwater, the proponent would implement several mitigation measures to reduce potential effects to Coldwater's hunting, trapping, and plant gathering activities. The proponent has 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 consideration of the information available to the Crown from the NEB process, consultation with Coldwater, Coldwater's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on Coldwater'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 Coldwater;
- Project-related pipeline and facility construction and routine maintenance activities within Coldwater's traditional territory are temporary and thus, likely to cause minor disruptions to Coldwater'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 Coldwater regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

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

Specific species fished by Coldwater community members include: fish weir, numerous species of salmon (i.e. coho, kokanee, sockeye, spring, and steelhead), suckers, numerous species of trout (i.e. bull, Dolly Varden, lake, rainbow) and whitefish. According to Coldwater's written evidence, salmon has always been important to Coldwater community members. Community members fish for sockeye at specific fishing stations on the Fraser River and also travel to the Thompson River to harvest salmon for their families. Coldwater River supports a number of species of salmon, including coho, early-run chinook, and steelhead although Coldwater expressed concerns that the river no longer supports significant harvest levels. According to Coldwater, the entire river system, inclusive of the Coldwater, Nicola, Thompson, and Fraser Rivers has been central to Coldwater's way of life for millennia.

Coldwater identified several concerns related to environmental effects of the Project on fishing activities, in particular, risks to Coldwater's marine and freshwater resources important to salmon in the Fraser River, and the loss of traditional resources. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low 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 would monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Coldwater, the proponent would implement several mitigation measures to reduce potential effects to species important for Coldwater'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.

Coldwater identified 24 fishing sites in evidence submitted to the NEB. In Coldwater's written final argument ([A4X5J8](#)), Coldwater identified the historical and current use of fishing locations along the Coldwater River, as well as in Lily and Gwen Lakes. 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.

Coldwater raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, specifically the loss of traditional resources, including spiritually and culturally important sites such as Coldwater Creek and Kwinshatin Creek, increased barriers to accessing traditional resources and practices, and increased access to the land by members of the public due to Project-related activities. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Coldwater'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 Coldwater 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 important for Coldwater (section 4.3.2 of this Report). With regards to specific concerns raised by Coldwater, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Coldwater's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Coldwater's traditional lands, as described in the Access Management Plan. The proponent committed to working with Coldwater to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Coldwater expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, and sense of spiritual and cultural alienation. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Coldwater's fishing activities. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. NEB conditions, if the Project is

approved, would either directly or indirectly reduce the social, cultural, spiritual or experiential effects associated with fishing activities (section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Coldwater, Coldwater'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 minor-to-moderate impact on Coldwater'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 Coldwater;
- Project-related pipeline and facility construction and routine maintenance activities within Coldwater's traditional territory are temporary and thus, likely to cause minor disruptions to Coldwater'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 Coldwater regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

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

As described in Coldwater's evidence, traditional foods are traded and served at cultural events such as the sun dance, which is held at two sites on Coldwater Reserve No. 1. Materials harvested by Coldwater community members are used for building sweat lodges, the sun dance ring, funerals and other traditional items such as drums and cradle boards, which are hung in special areas after single use. Community members use streams and rivers for cleansing and ritual bathing, and honour spirit beings in lakes and at waterfalls. Coldwater's evidence describes traditional use sites as part of the cultural fabric of being a member of the Coldwater community. For community members, being out in Coldwater's territory connects them to the past and their generations of ancestors.

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.

Coldwater identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including to spiritually and culturally important sites such as Coldwater Creek and Kwinshatin Creek, burial sites and places where cradleboards have been hung. 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 Coldwater, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Coldwater'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.

In evidence submitted to the NEB, Coldwater identified 4 archaeological sites (e.g., pit houses), 27 dwelling sites (e.g., campsite, homestead, houses, and pit houses), 1 named place, 2 recreation areas (i.e. childhood playground/territory and swimming), 5 sites for Legendary Beings (e.g., little people, sasquatch, wild man, and *xaxaku*), 23 sacred/ceremonial sites (including cradleboards, ritual bathing, spiritual training, and vision quest area, among others), 6 traditional history sites, and 2 trails/travelways (e.g., horse tie-up). Other traditional use sites identified by Coldwater include environmental features (e.g., waterfalls), forestry (e.g., cedar), and marker sites (e.g., avoidance area). In Coldwater's written final argument, Coldwater identified sweathouses along creeks and the Coldwater River and bathes in the Coldwater River. Spiritual beings, known as little people, are considered by Coldwater to live along creeks in Coldwater Reserve No. 1, including Kwinshatin Creek and along the Coldwater River and ancestors of community members are buried in these locations. Kwinshatin Creek is where people used to congregate. It is Coldwater's view that all the lands are sacred, and spiritual grounds are very important.

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.

Coldwater raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices and increased access to the land by members of the public due to Project-related activities. 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 Coldwater'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 Coldwater'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 and the proponent's commitment to meeting with Coldwater prior to the start of construction to discuss avoiding, mitigating, and accommodating potential effects associated with routing through the Coldwater Valley.

Coldwater expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including impacts affecting the transmission of Nlaka'pamux culture and language to the next generation, and cultural and social impacts of the Project on creeks located inside and outside of Coldwater Indian Reserve No. 1, including Coldwater Creek and Kwinshatin Creek. As described previously, the Crown appreciates that this may result in temporary interruptions to Coldwater'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 Coldwater, Coldwater'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 minor-to-moderate impact on Coldwater'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 Coldwater's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Coldwater's traditional territory are temporary and thus, likely to cause minor disruptions to Coldwater'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 Coldwater 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 Coldwater's traditional territory assessed as having strong *prima facie* claim to Aboriginal title, in the vicinity of Merritt where there are indications of several historic villages in proximity in the Nicola Valley.

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

- Impacts could impede or disrupt Coldwater's use of its asserted traditional territory, including potential alienation of Nlaka'pamux territory and impacts to groundwater;
- Activities could affect Coldwater's ability to manage and make decisions over the Project area, including the inconsistency of the Project with Coldwater's mission to enhance and sustain their quality of life through wellness and culture, and to utilize and preserve all of their resources for now and future generations; and
- Project-related activities that could affect Coldwater's economic development aspirations for its asserted traditional territory.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. 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 Coldwater prior to the start of construction to discuss avoiding, mitigating, and accommodating potential effects associated with routing through the Coldwater Valley. The Crown also understands the proponent, based on discussions with Coldwater, did not pursue pipeline routing that crosses Coldwater Indian Reserve No. 1. Further, the NEB conditioned the proponent to complete a hydrogeological report relating to the aquifer at Coldwater Indian Reserve No. 1 that requires quantifying the risks posed to groundwater supplies on Coldwater Indian Reserve No. 1 and describing measures to address these risks including routing and Project design. It is noted that Coldwater 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, the Project is expected to have minor-to-moderate impacts on Coldwater's asserted Aboriginal title to the proposed Project area.

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

Coldwater expressed several concerns related to potential direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly related to groundwater resources. Specific concerns related to groundwater include potential impacts on groundwater contamination and water

scarcity, risks and potential for spills to impact Coldwater's critical groundwater resources and associated adverse effects of a spill on Coldwater members' health and cultural well-being. Coldwater also mentioned spill-related impacts from oil being carried down into the Fraser River from local waterways, risks to Coldwater's lands and marine and freshwater resources important to salmon in the Fraser River, and anxiety experienced by Coldwater members associated with the perceived consequences of a pipeline spill uphill from Coldwater Indian Reserve No.1. Other concerns expressed include impacts to sensitive areas, wildlife habitat and fresh water aquatic habitat in the Coldwater, Nicola, Thompson and Fraser Rivers, and spill prevention and response capabilities of the proponent.

The Crown also appreciates Coldwater's concerns regarding spills, and the potential for a spill to impact Coldwater'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 Coldwater 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. With regards to groundwater resources, NEB Condition 39 requires the proponent to file a hydrogeological report relating to the aquifer at Coldwater Indian Reserve No. 1 that must include, among other things, quantification of the risks posed to groundwater supplies on Coldwater IR No. 1 in the event of leaks, accidents or malfunctions from the Project, a description of proposed measures to address identified risks, and a summary of consultations undertaken with the Coldwater. In consideration of this information and analysis, as well as information available to the Crown on Coldwater's Aboriginal Interests and concerns raised by Coldwater during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Coldwater's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. The Crown acknowledges that Coldwater relies primarily on an aquifer crossed by the Project for their drinking water, as well as subsistence foods and natural resources, and are at greater risk for adverse effects from an oil spill<sup>4</sup>. To address the concerns raised by Coldwater during the post-NEB Crown consultation period, EAO proposes a condition that would require, in addition to NEB Condition 39, characterization of the aquifer recharge and discharge sources and aquifer confinement, and include an assessment of the vulnerability of the aquifer.

Subsequent to the identification and apparent remediation of contamination at or near a site located on the Coldwater Indian Band reserve, continuing concerns were expressed by Coldwater and additional contamination was identified and has been investigated. To follow-up on this concern, the Crown consultation team worked with the NEB to seek an update on progress towards resolving the issue. As of October 2016, the NEB has confirmed that this is an ongoing file under the NEB's Remediation Process Guide. Trans Mountain has submitted a Remedial Action Plan (RAP) to the NEB for review, and provided

---

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

a copy to Coldwater seeking its feedback. This is also an active file under the NEB's engagement and issue resolution program.

## **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 Coldwater's Aboriginal Interests would be minor-to-moderate.

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