

Appendix B.17 - Canim Lake Band (Tsq'escen)

I - Background Information

Canim Lake Band (Canim Lake), also known as Tsq'escen, is a Secwe'pemc (pronounced "Shi-HUEP-muh" or "She-KWE-pem") or Shuswap Nation. Canim Lake holds six reserves between Lac la Hache and Canim Lake, approximately 130 kilometres (km) north of Kamloops, British Columbia (BC) in the Cariboo-Chilcotin region. As of July 2016, Canim Lake had 607 registered members, of which 420 live on reserves.

A small group of Canim Lake members, or Tsq'escenemc, speak the traditional language; Secwepemcstin. The Tsq'escenemc, meaning "people of broken rock", are ethnographically recognized as part of the 'Lake Division' of the Secwe'pemc or Shuswap people, using the vast number of lakes in the region for sustenance. The Secwe'pemc are part of the Interior Salish People, who were considered historically as a semi-nomadic trading society, gathering berries in the summer, hunting and fishing throughout the year. In the winter, Secwe'pemc traditionally built pithouses. Canim Lake signed a Forest and Range Consultation and Revenue Sharing Agreement with the Province of British Columbia in March 2015, within which Canim Lake's identifies its asserted traditional territory.¹

Canim Lake is a member of the Northern Secwepemc te Qelmucw Nation and Northern Shuswap Tribal Council. The Northern Secwe'pemc te Qelmucw Nation is in Stage 4 negotiations within the BC Treaty Commission Process, and has also filed a protective writ in 2003 in BC Supreme Court, seeking a declaration of Aboriginal title within the area identified in the writ.

II - Preliminary Strength of Claim Assessment

- The pipeline right of way (RoW) follows along the north-eastern and south-eastern edges of Canim Lake's asserted traditional territory near Valemount and Clearwater for a total of approximately 59 km. The Blackpool and Albreda Pump Stations appear to fall within this area. Canim Lake's closest reserve is located approximately 46 km from the right of way (RoW).
- The Crown's preliminary assessment of Canim Lake's claim for Aboriginal rights over the section of the Project that spans Valemount to Clearwater is a weak *prima facie* claim as this area was generally considered outside the historic traditional territory of the Secwepemc Lake Division. The section of the Project south of Clearwater, overlapping Canim Lake's asserted territory is assessed as a moderate *prima*.
- *Prima facie* claim of Aboriginal rights in this area as this area was generally considered within the historic traditional territory of the Secwepemc Lake Division².

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/canim_lake_fcrsa_executed_may4_2015.pdf

² (NSTQ EHR) NORTHERN SECWEPEMC TE QELMUCW, CANIM LAKE, CANOE CREEK, SODA CREEK AND WILLIAMS LAKE FIRST NATIONS, Review of Ethnographic and Historical Sources, Ministry of Justice, Legal Services Branch, Aboriginal Research Division, 22 February 2012; Teit, James. 1909. "The Shuswap" The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History, New York. Volume II: Ethnology and Archaeology of Southern British Columbia and Washington. Franz Boas (ed.) New York: G. E. Steichert, 1909. 443-789; and

- The Crown's preliminary assessment of Canim Lake's claim for Aboriginal title over the section from Valemount to Clearwater is a weak *prima facie* claim as this area of the Project is depicted by ethnographers as outside the area of the historic traditional territory of the Secwepemc Lake Division or far removed from areas of known habitation or other historic use at 1846. The section of the Project south of Clearwater overlapping Canim Lake's asserted territory is assessed as a weak *prima facie* claim of Aboriginal title in this area; although this area is generally considered within the area ethnographers attribute to the Secwe'pemc Lake Division, the area is not in proximity to areas of known historic use³.

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 Canim Lake's Aboriginal Interests, the Crown is of the view that the legal duty to consult Canim Lake lies at the low portion of the *Haida* consultation spectrum. In consideration of the Project intersecting with Canim Lake's asserted traditional territory, Canim Lake was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Canim Lake opportunities to be consulted at a deeper level.

Canim Lake participated as a commenter in the National Energy Board (NEB) review process. Canim Lake signed a letter of support for the Project with the proponent on October 20, 2014, in which they withdrew objection to the Project and acknowledged their satisfaction with the proponent's mitigation measures and consultation.

The Major Projects Management Office (MPMO) offered Canim Lake \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Canim Lake an additional \$6,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Canim Lake did not use these funding opportunities. On September 23, 2016, Canim Lake was issued \$5,000 in capacity funding by EAO to assist with participation in consultation. Canim Lake met with Crown officials on August 30, 2016, to discuss the Project.

The Crown provided a first draft of this Report to Canim Lake for review and comment on August 17, 2016. The Crown did not receive comments from Canim Lake 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 Canim Lake.

IV - Summary of Key Canim Lake Issues and Concerns Raised

The Crown has gained its understanding of Canim Lake's issues and concerns through the community's involvement in the NEB process, and through other engagement with the Crown. This section offers a summary of the key issues raised by Canim Lake, and does not present the views of the Crown as to

Tsq'escenem'c, The People of Broken Rock, The Canim Lake Band, Snine Forest, Stewardship Plan, Version 2.0.
April 15, 2016

³ Ibid

whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Canim Lake's key Project-related issues and concerns are summarized below:

Cultural and Social Impacts

Canim Lake raised concerns about potential Project-related impacts on fish, wildlife, vegetation that might result in a loss of community members' access to important harvesting areas and/or increased travel time to harvest important species. During construction, Canim Lake is concerned about potential Project-related impacts to sacred sites, burial grounds, archaeological sites and artifacts. Concerns about increased access for non-Aboriginal hunters to Canim Lake's traditional territory were also raised.

Canim Lake also noted the temporary closing of the North Thompson Park during Project construction and potential areas of impact in the Raft River and Clearwater areas.

Environmental Impacts

Canim Lake noted concerns about current water quality and the potential effect that the Project might have on worsening water quality, including siltation, spawning habitat for fish, and water availability in the region. Community members are specifically concerned about moose, caribou and medicinal plants, migratory patterns of animals in the area, migratory birds, and the reclamation of vegetation and habitat along the right of way (RoW). In relation to reclamation activities, Canim Lake noted importance of using traditional plants could be used to reclaim the disturbed land.

Canim Lake have concerns about effects of the Project outside of its territory, inside its territory, and how these effects may impact their community overall.

Economic Impacts

Canim Lake raised concerns about employment and opportunities for the involvement of local people on the Project.

Accidents and Malfunctions

Canim Lake noted concerns of the potential for a spill and resulting effects on fish and fish habitat, and wildlife and natural resources, which are considered the lifeblood of the Canim Lake people. Concerns were also raised of potential effects of a spill along water crossings on the food chain and on human health, and control structures for repairs and spills in the completed pipeline. Handling of contaminated materials in the event of a spill, in the river system in particular, remains a concern to Canim Lake.

Canim Lake remain uncertain understanding what a spill would look like, what measures would be taken to deal with spill on land, river, or ocean, what pipeline monitoring looks like, and what will be done to protect animals, wildlife, waterways, and lands in event of the spill, and what measures would be taken to prevent the pipeline from being dug up and/or exposed.

Health and Human Safety

Canim Lake community members are concerned about safety protocols for the Project.

Methodology, Process and Consultation

Canim Lake expressed concerns about the communications with the proponent and lack of confidentiality.

Accommodation Proposals

Canim Lake provided the federal and provincial crown with proposed accommodation measures to consider in relation to accommodating potential impacts of the Project on Canim Lake's Aboriginal Interests:

- The proponent will contact Canim Lake immediately should any environmental, archaeological, or other issues that require mitigation occur, so that they can work collaboratively to mitigate the effects;
- Use of traditional plants to revegetate disturbed RoW, and use Canim Lake community members to replant the RoW area with indigenous species;
- Canim Lake would like to participate in any visual monitoring of the pipeline RoW; and
- Development of a cultural protocol with the proponent.

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 Canim Lake 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.

Canim Lake's Response to NEB Recommendation Report

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

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

Canim Lake completed a traditional land use (TLU) study in 2013 titled "Trans Mountain Expansion Project Consultation and Information Gathering: Report of Consultation between Canim Lake Band and Kinder Morgan Canada". The focus of the study was on Crown lands within the asserted territory of Canim Lake crossed by the segment of the proposed pipeline from Hope to Burnaby. TLUs identified by Canim Lake include hunting, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members, and trails and travelways. The results of the TLU are summarized in the Project Application ([A3S2H1](#)). During the August 30, 2016 meeting with the Crown, Canim Lake explained that the TLU only provided information from the individuals interviewed for the TLU as people in their community only speak about their own personal experiences and sites, and will typically not speak for others.

Impacts on Hunting, Trapping, and Plant Gathering

Canim Lake community members hunt moose, deer, elk and bears, primarily in the autumn when animals have fattened up for the winter. Trapped species include marten, lynx, mink, weasel, squirrel, wolverine, badger, cougar, fox, muskrat, beaver, rabbit and grouse. Canim Lake reported that edible plants and berries are important food sources for community members. Cow parsnip, wild rhubarb, wild cranberries, wild blueberries, huckleberries and mushrooms are gathered, and pine, spruce and birch trees are also used.

Canim Lake identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, specifically moose, caribou and medicinal plants, migratory patterns of animals in the area, migratory birds, and the reclamation of vegetation and habitat along the RoW. 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. 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 Canim Lake, the proponent would implement several mitigation measures to reduce potential effects to species important for Canim Lake's hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of

clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP), and the vegetation and wildlife management plans. The proponent is also committed to meeting with Canim Lake to further discuss and address concerns, where possible, prior to the start of construction.

Canim Lake elders and community members identified seven hunting sites, three trap lines and 10 plant gathering sites during the TLU study for the Project. One hunting site near Blue River is located within the proposed pipeline corridor, and six hunting sites are more than 3 km from the Project. The nearest trapping site is located approximately 4.3 km north of the proposed pipeline corridor, and two trappings sites are more than 21 km from the proposed pipeline corridor. Two plant gathering sites are located within the proposed pipeline corridor, three plant gathering sites are located within 2 km of the proposed pipeline corridor, and five sites are more than 7.6 km from the proposed pipeline corridor.

Canim Lake raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including losing access to important harvesting areas or having to travel further to harvest important species, and increased access for non-Aboriginal hunters to Canim Lake's asserted traditional territory. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Canim Lake's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. Canim Lake suggested that traditional plants could be used to reclaim the areas that would be disturbed. The Crown appreciates that with construction and reclamation activities disruptions to access may result in a loss of harvesting opportunities for Canim Lake. 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 Canim Lake, the proponent would implement several mitigation measures to reduce potential effects on traditional land resource use (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 disturbance to access to Canim Lake's traditional lands. The proponent is committed to minimizing the development of access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent will work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Canim Lake prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Canim Lake to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Canim Lake expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including impacts on wildlife and natural resources because they are considered the life-blood of Canim Lake Band people. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Canim Lake's hunting, trapping, and plant gathering activities. The Crown appreciates that this short-term disruption could temporarily alter the behavior of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members. 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). 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 Canim Lake, Canim Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Canim Lake'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 Canim Lake;
- Project-related pipeline and facility construction and routine maintenance activities within Canim Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Canim Lake'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 Canim Lake regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Canim Lake community members fish trout, kokanee, burbot and whitefish in several lakes in the region, salmon and trout in larger rivers and creeks.

Canim Lake identified many concerns related to environmental effects of the Project on fishing activities, including potential Project-related impacts on fish and fish habitat (including spawning habitat), current water quality and the potential effect that the Project might have on worsening water quality, including siltation, fish habitat and water availability in the region. 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 will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Canim Lake, the proponent would implement several mitigation measures to reduce potential effects to species important for Canim Lake'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.

Canim Lake Elders and community members identified six fishing sites during the TLU study for the Project, of which two fishing sites on the North Thompson River and Raft River are located within the proposed pipeline corridor. Four fishing sites are located more than 11 km from the proposed pipeline corridor.

Canim Lake raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including the temporary closing of the North Thompson Park during Project construction and potential areas of impact in the Raft River and Clearwater areas, and community members losing access to important harvesting areas or having to travel further to harvest important species. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Canim Lake'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 Canim Lake 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 Canim Lake (Section 4.3.2 of this Report). With regards to specific concerns raised by Canim Lake, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Canim Lake's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Canim Lake's traditional lands, as described in the Access Management Plan. The proponent committed to working with Canim Lake to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Canim Lake expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including impacts on fish because they are considered the lifeblood of Canim Lake people. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Canim Lake'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 potential 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 Canim Lake, Canim Lake's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Canim Lake'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 Canim Lake;
- Project-related pipeline and facility construction and routine maintenance within Canim Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Canim Lake'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 Canim Lake regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Other traditional and cultural practices sites include trails and travelways, habitation sites, gathering places, and sacred areas. Peeled birch bark trees can be found along many of the historic trails in the Canim Lake traditional territory. Historically, Green Lake was used as a gathering place for the 17 Shuswap nations where there are many burial sites. Annual gatherings are currently held at Little Fort.

Canim Lake identified many concerns related to environmental effects of the Project on other traditional and cultural practices, in particular, impacts to sacred sites, burial grounds, archaeological sites and artifacts. As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources important for Canim Lake's traditional and cultural practices (Section 4.3.4). With regards to specific concerns raised by Canim Lake, 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 right-of-way 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. During the meeting with the Crown on

August 30, 2016, Canim Lake expressed that they are satisfied with protocols and procedures in place to guide the proponent if they come across archaeological sites during construction.

Canim Lake elders and community members identified five historic trails, nine habitation sites, four gathering places during the TLU for the Project. There are no habitation sites, gathering places or sacred areas within the proposed pipeline corridor. One trail from Canim Lake I.R. 1 to Boulder on the North Thompson River is within the proposed pipeline corridor, and four trails are more than 2.5 km from the proposed pipeline corridor. Four habitation sites are within 2 km of the proposed pipeline corridor, including an old swing bridge site, pit house and cache pits at North Thompson River Provincial Park, and historic and currently used cabins near Lemieux Creek and Mount Ollie. Five habitation sites are located more than 27 km from the Project. The nearest gathering place is at Little Fork approximately 1.5 km from the proposed pipeline corridor, and three sites are located more than 70 km from the proposed pipeline corridor. The nearest sacred area is an archaeological site 1 km east of the proposed pipeline corridor, and three (burial) sites are located more than 10 km from the proposed pipeline corridor.

As described in Section 4.3.4 of the 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. The Crown appreciates that Canim Lake'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 Canim Lake'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). Canim Lake expressed concern that the community remain informed and involved in the Project so that the community can be assured of activities and any environmental impacts. Canim Lake also noted to the Crown that they would be interested in engaging in a cultural protocol with the proponent. 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.

As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Canim Lake'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 Canim Lake, Canim Lake'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, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Canim Lake's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and operation activities are likely to have a minor to moderate environmental effect on Canim Lake's traditional and cultural practices;
- Project-related construction and routine maintenance within Canim Lake's traditional territory are temporary and thus, likely to cause minor disruptions to Canim Lake'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 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 Canim Lake's asserted traditional territory assessed as having a weak *prima facie* claim for Aboriginal title as this area of the Project is depicted by ethnographers as outside the area of the historic traditional territory of the Secwepemc Lake Division or far removed from areas of known habitation or other historic use at 1846. The section of the Project south of Clearwater overlapping Canim Lake's asserted territory is assessed as a weak *prima facie* claim; although this area is generally considered within the area ethnographers attribute to the Secwe'pemc Lake Division, the area is not in proximity to areas of known historic use

The Crown has actively consulted with Canim Lake throughout the NEB process and Crown consultation process in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title.

Concerns related to Aboriginal title raised throughout the NEB and Crown consultation process include:

- Impacts could impede or disrupt Canim Lake's use of its asserted traditional territory;
- Activities could affect Canim Lake's ability to manage and make decisions over the Project area; and
- Project-related activities that could affect Canim Lake's economic benefit of the lands and resources in their 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 notes that Canim Lake executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the Project proceeds.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion, that the Project is expected to have negligible impacts on Canim Lake's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Canim Lake expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly potential effects of a spill on fish and fish habitat, and wildlife and natural resources, which are considered the lifeblood of the Canim Lake people, and along water crossings on the food chain and on human health.

The Crown also appreciates Canim Lake's concerns regarding spills, and the potential for a spill to impact Canim Lake'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 Canim Lake 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 Canim Lake's Aboriginal Interests and concerns raised by Canim Lake during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Canim Lake's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill⁴.

VI - Conclusions

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

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Canim Lake'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 Canim Lake in emergency response planning activities. The federal Crown is also considering incremental

⁴ Trans Mountain Final Argument, p. 85 and 207

measures that would further accommodate the potential adverse impacts of the Project on Canim Lake, 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 Canim Lake in an attempt to offset potential impacts, should the Project proceed.