

Appendix B.18 – Little Shuswap Lake Indian Band

I - Background Information

Little Shuswap Lake Indian Band (Little Shuswap Lake) is a Secwe'pemc (pronounced "Shi-HUEP-muh" or "She-KWE-pem") or Shuswap Nation Aboriginal group located in south-central British Columbia (BC) along the shores of Little Shuswap Lake. Their traditional name is Skwlax, which translates to 'black bear' in their traditional language, Secwepemcstin. Little Shuswap Lake holds four reserves: *Quaaout No. 1*, *Chum Creek No. 2*, *Meadow Creek No. 3*, *Scotch Creek No.4*, and *North Bay No. 5*. As of July 2016, there are 349 registered Little Shuswap Lake members, of whom 196 live on Little Shuswap Lake reserves, 41 live on other reserves, and 112 live off reserve.

There is ethno-historical information that suggests that within the Secwe'pemc Nation, there was a notion of traditional territories among different Secwe'pemc communities or divisions; territories that were subject to the stewardship and control of those communities or divisions. The Crown understands that the historical Shuswap Lakes Division consisted of a number of bands, and that Little Shuswap Lake is a modern-day descendant of the Shuswap Lakes Division.

Little Shuswap Lake submitted a protective *Writ of Summons* in the BC Supreme Court on December 10, 2003. Little Shuswap Lake's *Writ* is independent of the *Writ of Summons* filed by the Secwe'pemc Nation. Little Shuswap Lake signed a Forest and Range Agreement in 2004 within which an area is identified as its asserted traditional territory¹.

II - Preliminary Strength of Claim Assessment

- Approximately 27 kilometres (km) of the proposed pipeline right-of-way (RoW) would be located within Little Shuswap Lake's asserted traditional territory and the closest Little Shuswap Lake reserve to the RoW is 41 km.
- The Crown's preliminary assessment of the Little Shuswap Band/historical Shuswap Lakes Division's claims for Aboriginal rights applies over the section of the Project that spans the area from north of Blue River along the North Thompson River to Kamloops, and south to Stump Lake, which overlaps with their asserted territories. That claim is assessed as a weak *prima facie* claim for Aboriginal rights as this area falls outside of the area ethnographers attribute to the historical Shuswap Lake Division of Secwe'pemc, and there are no historical indications for Shuswap Lake division hunting, fishing, and gathering in this area around the time of contact².

¹ https://www.for.gov.bc.ca/haa/Docs/little_shuswap_fra.pdf

² Ministry of Justice, Aboriginal Research Division, Secwepemc Nation: A Brief Ethnohistoric Overview of the Eastern Divisions (Revised August 2012); Ministry of Justice, Aboriginal Research Division Harper Creek Mine: Review of Ethnographic and Historical Sources (Revised June 2012); Sun Peaks Resort: A Review of the Historical and Ethnographic Sources Relating to Aboriginal Use and Occupation (Updated July 2011); Teit, James, The Shuswap, in Franz Boas ed., The Jesup North Pacific Expedition, Volume II, Ethnology and Archaeology of Southern British Columbia and Washington, New York: American Museum of Natural History, 1908; Dawson, George M., Notes on the Shuswap People of British Columbia, Transactions of the Royal Society of Canada, 1891; Palmer, Gary B., Cultural Ecology in the Canadian Plateau: Pre-Contact to the Early Contact Period in the Territory of the Southern Shuswap Indians of British Columbia, in Northwest Anthropological Research Notes, Vol. 9 No. 2, Fall 1975; Ignace, Marianne Boelscher, Shuswap in Deward E. Walker, Jr. ed., Handbook of North American Indians, Vol. 12, Washington: Smithsonian Institution, 1998; and, Ignace, Marianne and Ron Ignace, The Secwepemc:

- The Crown's preliminary assessment of Little Shuswap Band/historical Shuswap Lakes Division's claims for Aboriginal title applies over the section of the Project that spans the area from north of Blue River along the North Thompson River to Kamloops, and south to Stump Lake. The claim is assessed as a weak *prima facie* claim for Aboriginal title as this area is outside of the area ethnographers historically attribute to the Shuswap Lake Division and there are limited indications of historic Shuswap Lake division uses at 1846³.

III - Little Shuswap Lake's Involvement in the NEB and Crown Consultation Process

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

Little Shuswap Lake did not participate in the National Energy Board (NEB) review process, and did not submit an application for funding to the NEB. However, Little Shuswap Lake has been engaged in the Crown consultation process and met with the Crown consultation team on September 20, 2016.

The Major Projects Management Office (MPMO) offered Little Shuswap Lake \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Little Shuswap Lake an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Little Shuswap Lake signed contribution agreements with the MPMO in response to both of these offers, for a total of \$13,000 in allocated funding.

EAO provided Little Shuswap Lake with \$5,000 in capacity funding to assist with the Crown consultation process on September 27, 2016.

The Crown provided a first draft of this Report to Little Shuswap Lake for review and comment on August 17, 2016. The Crown did not receive comment from Little Shuswap Lake on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2106. The Crown has not received comments from Little Shuswap Lake.

IV - Summary of Key Little Shuswap Lake Issues and Concerns Raised

The Crown has gained its understanding of the issues and concerns of Little Shuswap Lake based on information brought forward at the September 20, 2016 meeting. The following concerns were raised during Crown consultation:

Environmental Impacts

- Concerns with the Project's stream crossings in Little Shuswap Lake's watershed.
- Concern regarding Project-related effects to the salmon run; Little Shuswap Lake notes that there is already a declining number of salmon.
- Concern regarding cumulative environmental effects.

Traditional Resource Use and Rights to Land in Bruce Morrison and C. Roderick Wilson eds., *Native Peoples, The Canadian Experience*, Don Mills: Oxford University Press, 2004.

³ Ibid.

Impacts on Aboriginal Rights and Title

- Concern that further effects to salmon populations would impact Little Shuswap Lake's ability to fish, and could affect vulnerable members of their community, especially elders.
- General concern of the potential effects to wildlife, and the impacts on Little Shuswap Lake's ability to hunt in the area.

Other Concerns

- General concerns on marine shipping and safety.
- Lake Shuswap Lake will be building a new reserve in 5-15 years, and it will likely be close to the Project's RoW. There is concern that Lake Shuswap Lake will not be able to get accommodation for this.

Accommodation Measures Proposed by Little Shuswap Lake

During the September 20, 2016 meeting, Little Shuswap Lake noted some accommodation measures to address potential impacts of the Project on Little Shuswap Lake's Aboriginal Interests. This includes:

- Employment opportunities;
- Revenue sharing (set number of barrels of oil per day providing the financial basis);
- Fish hatchery in the area (have DFO consider reintroducing stocks through hatcheries);
- Economic diversification activities;
- Involve Aboriginal Groups in wildlife studies (e.g. moose population studies); and
- Develop a First Nations economic development trust that could be in the hands of Aboriginal leadership, which could be used for economic diversification, social and environmental programs.

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 Little Shuswap 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.

Little Shuswap Lake's Response to NEB Recommendation Report

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

V - Potential Impacts of the Project on Little Shuswap Lake's Aboriginal Interests

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

It is the Crown's understanding that Little Shuswap Lake did not participate in the NEB process and did not complete a traditional land and resource use study for the Project. As a result, the Crown has limited information on the specific sites and resources used by Little Shuswap Lake for traditional purposes that could be impacted by the Project. Little Shuswap Lake identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on Little Shuswap Lake's Aboriginal Interests.

The general direct and indirect effects of the Project on Aboriginal Interests, along with key mitigation measures, are described in Section 4.3 of the main body of this Report. As described in that section, routine Project-related activities are likely to result in low to moderate impacts on the lands, waters and resources that Aboriginal groups use to exercise their hunting, trapping, plant gathering, fishing, and other traditional activities. Short-term, temporary access disruptions to traditional activities are expected, which would be localized within the Project footprint for the pipeline and associated facilities. In consideration of the information available to the Crown from the NEB process, Crown consultation with Little Shuswap Lake, 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, the Project is expected to result in a negligible-to-minor impact on Little Shuswap Lake's Aboriginal Interests.

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. 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 Little Shuswap Lake's asserted Aboriginal title to the proposed Project area.

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 Little Shuswap Lake's Aboriginal Interests, and concerns raised by Little Shuswap Lake during the Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Little Shuswap Lake's exercise of Aboriginal Interests, depending on the characteristics and severity of the spill. 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.

VI - Conclusions

The Crown understands that 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 ongoing burdens and risks associated with the Project. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Little Shuswap Lake's Aboriginal Interests would be up to negligible-to-minor.

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