Appendix B.19 – High Bar (Llenlleney'ten) First Nation

I. Background Information

The Llenlleney'ten belong to the Secwepemc (pronounced "*Shi-HUEP-muh*" or "*She-KWE-pem*") Nation. The Llenlleney'ten band government is called the High Bar First Nation (High Bar). High Bar is a small community of 131 registered members. While High Bar has three reserves (High Bar No. 1, High Bar No. 1A, and High Bar No. 2), according to Indigenous and Northern Affairs Canada, only one individual lives on the community's own reserve (as of July 2016). High Bar's website indicates that reserve lands are of poor quality and historically contributed to poverty within the community.

High Bar is located in a remote area along the Fraser River in the Chilcotin District of British Columbia (BC). In the 2015 *Forest & Range Consultation and Revenue Sharing Agreement* (FCRSA) between High Bar and the Province of BC, the asserted traditional territory of High Bar is identified in an area that stretches between 100 Mile House in the north, Lillooet in the south, and Alexis Creek in the west.

The Llenlleney'ten are culturally Secwepemc and are a party to the Secwepemc Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ.

There is ethno-historical information that suggests within the Secwepemc, there was a notion of traditional territories among different Secwepemc communities or divisions, territories that were subject to the stewardship and control of those communities or divisions. Llenlleney'ten is understood to correspond with the Fraser River Division. The Province understands that the Xat'sull (Soda Creek), Williams Lake (T'exelc) and Stswecem'c - Xgat'tem (Canoe Creek/Dog Creek), Esk'etemc (Alkali Lake), High Bar and Whispering Pines/Clinton First Nation correspond with the Fraser River Division (who appeared to have absorbed the Canyon Division following the smallpox epidemic in the 1860s).

In Llenlleney'ten culture, potlatches perform an important role in bringing together family members, community leaders, and guests to celebrate significant developments in the community (e.g. births, rites of passage, weddings, honoring the deceased). Traditionally, these gatherings took place in the winter.

II. Preliminary Strength of Claim Assessment

The Crown's understanding is that the Project does not overlap High Bar's asserted traditional territory. Based on the information available to the Crown, the Project does not overlap with the territory that High Bar identified as its traditional territory in its 2015 Forest Consultation and Revenue Sharing Agreements and it does not overlap with the area ethnographers attributed to the Fraser River Division, which is generally described to include areas on both banks of the Fraser River, from just north of Soda Creek in the north, to just below the confluence of Kelly Creek with the Fraser River far to the south, north of Lillooet. The closest location of the Project to the traditional territory boundary is approximately 50 kilometers (km). In considering Aboriginal rights claims, information relating to activities, practices, traditions, or customs integral to the distinctive culture prior to contact by

Europeans was considered. In considering Aboriginal title claims, information regarding sufficient and exclusive occupation at 1846 was considered.

High Bar has communicated that their asserted traditional territory includes the larger Secwepemc Nation Territory and provided a map outlining this area with their comments on the draft Consultation and Accommodation report submitted on September 19, 2016. It is High Bar's view that the Project runs directly through the Secwepemc Nation Territory, and thus through High Bar's traditional territory.

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 High Bar's Aboriginal Interests, the Crown is of the view that the legal duty to consult High Bar lies at the low portion of the *Haida* consultation spectrum. In consideration that the Project would not intersect with High Bar's asserted traditional territory, High Bar was placed on Schedule C of the Section 11 Order issued by the Environmental Assessment Office (EAO).

High Bar did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB. High Bar was not on the proponent's original list of Aboriginal groups in the 2013 Project Application. Subsequent to this, High Bar requested deeper engagement with the proponent regarding the Project. High Bar has engaged in additional correspondence with the Crown and met with the Crown on March 16 and August 5, 2016, to discuss the Project.

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

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. High Bar provided comments on the first draft of this Report on September 20, 2016. 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 High Bar.

IV. Summary of High Bar's Key Issues and Concerns Raised

The Crown has gained its understanding of High Bar's issues and concerns through written communication and meetings with the proponent and the Crown. High Bar has noted that because their reserves are unsafe/unsuitable for the majority of members to reside on they do not receive equal benefits and their unique concerns and challenges have not been appropriately addressed. The Crown's understanding of High Bar's other key Project-related issues and concerns are summarized below:

NEB and Crown Consultation Processes

- General concerns with the environmental review process including inadequate consultation on project applications;
- Lack of capacity to engage in consultation processes and high capacity demands due to numerous other proposed projects they are concurrently being consulted on;
- Disagree with the strength of claim assessment for Crown consultation;
- Concerns with the NEB process related to strength of claim;
- Inadequate consultation and engagement from the EAO;
- Inadequate funding to complete a traditional land use study for the Project; and
- High Bar expressed disagreement with the strength of claim assessment and subsequent level of consultation.

Accidents and Malfunctions:

- Potential Project-related impacts on community members, including impacts on food, in the event of spills, leaks, or other issues;
- Impacts of construction and spills on the environment including riparian areas and waterways; and
- Impacts of construction and spills on wildlife including migration, access to hunting grounds, loss of food resources.

Environmental Impacts

- Potential impacts from industrial development on wetlands, birds, and moose that are currently protected in a conservation area;
- The importance of preserving the quality and quantity of water;
- Impacts of construction and spills on the environment including riparian zones, waterways;
- Impacts of construction and spills on wildlife including migration, access to hunting grounds, loss of food resources;
- Cumulative effects on fish stocks;
- Impacts on traditional medicine plants used for healing (e.g. Labrador Tea); and
- Noise as a result of the Project.

Lack of Engagement with the Project Proponent:

- The ability of members to become involved with industry and share their experience and knowledge as well as participate in employment opportunities;
- Lack of effort by Kinder Morgan to consult meaningfully with High Bar;
- Funding to do the studies they would like to do; and
- Inadequate consultation and engagement from the proponent.

Potential Impacts to their Aboriginal Rights:

High Bar is concerned about the potential for significant environmental impacts that could adversely affect High Bar's Aboriginal rights and traditional territory, including:

- Potential impacts to hunting ground access;
- Potential loss of food resources; and
- Potential impacts to traditional medicine plants.

Accommodation Proposals

High bar has proposed the following mitigation and accommodation measures:

- Deeper engagement with the proponent regarding the proposed Project;
- Funds to address their lack of capacity to participate in consultation (e.g. review of CAR and EAO reports and to participate in any future engagement should the Project be approved);
- Re-evaluation of the High Bar strength of claim;
- Engagement in the RoW decision process/hearings;
- Employment opportunities for High Bar members;
- Use of clean fill on construction sites;
- Assessment of eagle nest and burrowing holes prior to construction;
- Measures to prevent the spread of invasive species;
- Timing of construction to avoid key mating and migration areas for moose, elk and deer; and
- Monitoring standards that are specific to medicinal plants.

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 High Bar 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.

High Bar's Response to NEB Recommendation Report

High Bar's legal counsel noted that there were significant concerns with the NEB process related to strength of claim determination.

V. Potential Impacts of the Project on High Bar'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 High Bar 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 High Bar for traditional purposes that could be impacted by the Project. High Bar identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on High Bar'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, although these impacts would be localized within the Project footprint for the pipeline and associated facilities. The distance of High Bar's traditional territory from the Project area of approximately 50 km significantly reduces the potential for High Bar's exercise of Aboriginal Interests to be directly impacted by routine Project activities. In consideration of the information available to the Crown from the NEB process, Crown consultation with High Bar, High Bar'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, the Project is expected to result in a negligible impact on High Bar's Aboriginal Interests.

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 High Bar's Aboriginal Interests, concerns raised by High Bar during the Crown consultation process, and the distance of High Bar's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on High Bar'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 the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. In respect of these findings, and based on the information available to the Crown about areas where High Bar exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on High Bar would be negligible.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support High Bar's ongoing involvement and participation in the proponent's detailed Project planning including the development of site-specific measures or pipeline routing to ensure negligible impacts on High Bar's Aboriginal Interests, as well as the involvement of High Bar in emergency response planning activities.