

## Appendix B.20 – Neskonlith Indian Band

### I - Background Information

Neskonlith Indian Band (Neskonlith) is part of the Secwe'pemc (pronounced "*Shi-HUEP-muh*" or "*She-KWE-pem*") or Shuswap Nation. The Province understands that the historical Shuswap Lakes Division consisted of a number of bands, and that Neskonlith is a modern-day descendant of the Shuswap Lakes Division.

Neskonlith is located about 70 kilometres (km) east of Kamloops, at Chase British Columbia (BC). Neskonlith holds three reserves: *Neskonlith 1*, *Neskonlith 2*, and *Switsemalph 3*. Neskonlith's registered population as of July 2016 was 657 with 323 living on reserve. The main reserve is located just east of where the Adams River and Shuswap Lake meet and then form the South Thompson River which then flows west to finally join the Fraser River.

There is ethno-historical information that suggests within the Secwe'pemc, there was a notion of traditional territories among different Secwe'pemc communities/divisions, territories that were subject to the stewardship and control of those communities/divisions.

Neskonlith is a party to the Secwe'pemc 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. The *Writ of Summons* involves: Adams Lake Indian Band, Bonaparte Indian Band, High Bar First Nation, Kamloops Indian Band, Neskonlith Indian Band, North Thompson Indian Band, Skeetchestn Indian Band, Spallumcheen Indian Band, and Whispering Pines/Clinton Indian Band. Neskonlith signed a Forest and Range Consultation and Revenue Sharing Agreement with the Province of British Columbia in 2013, within which a consultation area boundary is identified for consultation with Neskonlith, reflecting the area identified in the Secwe'pemc Nation writ.

Neskonlith's filings with the National Energy Board (NEB) state that its people have long relied on hunting and fishing for sustenance and for cultural fulfillment and that they maintain unextinguished Aboriginal title and rights to the lands and resources.

Neskonlith members historically spoke the Secwe'pemc language. Within the Secwe'pemc Nation traditional territory there are three Secwe'pemc dialects. In 1982 all 17 Secwe'pemc bands signed the Shuswap Declaration, dedicated to the preservation and perpetuation of the Secwe'pemc language, culture, and history; it led to the formation of the Secwe'pemc Cultural Education Society in 1983. This movement led efforts to provide public education and curriculum materials including the Secwe'pemc Museum and a native Post-Secondary Education Institute in Kamloops.

### II - Preliminary Strength of Claim Assessment

- The existing and proposed right of way (RoW) crosses through Secwe'pemc Nation traditional territory for approximately 350 km. Project facilities located within this territory would include: Kamloops Terminal, Black Pines Station, Darfield Station, Blackpool Station, McMurphy Station, Finn Station, Blue River Station, Chappel Station, Albreda Station, Rearguard Station, Hargreaves Station, Hargreaves Trap Site, and Jasper Station in Alberta. The RoW crosses Neskonlith's asserted traditional territory in BC for approximately 440 km and the RoW's closest point to a Neskonlith reserve is 37 km.

- The Crown's preliminary assessment of the Neskonlith/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 in BC. 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 Lakes Division of Secwepemc, and there are no historical indications for Shuswap Lakes division hunting, fishing, and gathering in this area around the time of contact<sup>1</sup>.
- The Crown's preliminary assessment of the Neskonlith/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 in BC. 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 Lakes Division and there are limited indications of historic Shuswap Lakes Division uses 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 Neskonlith's Aboriginal Interests, the Crown is of the view that the legal duty to consult Neskonlith lies at the low portion of the *Haida* consultation spectrum. In consideration of the Project intersecting with Neskonlith's asserted traditional territory, Neskonlith was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Neskonlith opportunities to be consulted at a deeper level.

Neskonlith has been an active intervenor in the NEB review of the Project and provided correspondence, oral traditional evidence, information requests, and written evidence.

The NEB allocated Neskonlith \$5,550 in participant funding plus travel for one to the hearing. The Major Projects Management Office (MPMO) offered Neskonlith \$11,919 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Neskonlith an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Neskonlith signed contribution agreements with the MPMO in response to both of these offers, for a total of \$25,919 in allocated funding. On October 12, 2016, Neskonlith was offered \$5,000 in capacity funding by EAO to assist with participation in consultation.

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<sup>1</sup> 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: 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.

<sup>2</sup> Ibid.

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

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

The Crown has gained its understanding of Neskonlith's issues and concerns through Neskonlith's involvement in the NEB process and through other engagement with the Crown. The Crown filed an Issues Tracking Table in the Information Request during the Intervenor Information Request Round to solicit feedback from Neskonlith; their response to the information request further contributed to the Crown's understanding of Neskonlith's procedural concerns [\[A71254\]](#). The Crown's understanding of Neskonlith's key Project-related issues and concerns is summarized below. This is a summary of the key issues raised by Neskonlith, 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.

##### Methodology, Process and Consultation

Neskonlith expressed the view that the NEB process is flawed and is an inappropriate way for the government to discharge the duty to consult. Neskonlith stated that they feel as though the Crown has not been directly engaged on consultation, and expect that the NEB and the Crown will respect the international status of human rights (in the International Covenant on Civil and Political Rights) and Indigenous rights (in the United Nations Declaration on the Rights of Indigenous Peoples). Neskonlith also expressed the view that the amount of funding provided by the NEB was insufficient to enable meaningful participation as it did not cover costs to participate in the Oral Traditional Evidence phase of the hearing. Neskonlith stated that as a small Indian Band, Neskonlith was at a disadvantage, not having the time and funds to hire the necessary experts to review the information and properly engage in the Project. Neskonlith also expressed serious concerns that the NEB process did not allow for Aboriginal groups to cross-examine Trans Mountain Canada and to challenge their evidence accordingly.

##### Social and Cultural Effects

Neskonlith raised concerns about impact on Aboriginal harvesting practices for subsistence living and medicinal purposes, decreased availability of traditional resources, and impacts to access to traditional land use (TLU) harvesting areas throughout their traditional territory, including specific berry picking, medicinal plant harvesting and fishing sites. Interference with community members' social well-being, spirituality, way of life, and connection to the land were also raised as concerns. Effects to and loss of traditional use sites, historic campsites, villages and cultural landscape features and travelways were also noted.

##### Cumulative Effects

Neskonlith identified concerns about cumulative effects given the amount of logging, mining, infrastructure, transportation, farming operations, residential, commercial, industrial and recreational developments, and pipeline activity which has taken place in the territory. Neskonlith also noted cumulative impacts of development in the region, potential effects to air quality, emissions and climate change concerns.

##### Economic Impacts

Neskonlith have noted concerns that the proponent's application did not adequately consider the Project's potential economic impacts to Neskonlith's traditional economy.

### Impacts to Aboriginal Rights

Neskonlith assert Aboriginal rights and title over their traditional territory (Secwepemc'ulecw), asserting that they have Aboriginal rights to fish for both personal and commercial use. In the Oral Traditional Evidence (A4Q2J0) submitted to the NEB, Neskonlith Chief Judy Wilson stated that the Secwepemc economy relies on access to their traditional territory and its ecological values. Neskonlith identified traditional and current use activities, including hunting and fishing (e.g., different salmon stocks), harvesting plants, roots and medicines for food, ceremonial and other purposes, and harvesting timber and plants for shelter. As Secwepemc People, Neskonlith stated that they have an Aboriginal right to engage in and continue those traditional and current use activities. Neskonlith is part of the Sexqeltkemc, Lakes Secwepemc, alongside other bands, including the Adams Lake Indian Band, and together, Chief Judy Wilson stated, they are the caretakers of the lands and waters of the Shuswap Lakes Watershed, including the South Thompson River and the Adams River.

Neskonlith expressed concerns with alienation and limited access to their territory, which they stated would limit the use of the lands in their territory now and in the future, limit their ability to protect the lands in the territory and to maintain traditional practices, and limit their ability to exercise our spiritual, cultural, and ceremonial practices, and deprive them of the economic benefit of the lands and resources. Neskonlith are concerned that the Project will result in the alteration or loss of habitat which is necessary to support plant and wildlife populations that are necessary to exercise Neskonlith's Aboriginal rights and enjoy their asserted Aboriginal title.

### Accidents or Malfunctions

Neskonlith expressed serious concerns about the impacts of oil or fuel spills affecting their traditional territory, including water wells, sensitive areas, wildlife habitat, fresh water habitat and river systems, specifically the Fraser River, North Thompson River, South Thompson River and Adams River systems, which are the spawning ground for the largest remaining sockeye salmon run. Given that fishing and Salmon are a "cultural keystone" for the Neskonlith people, Neskonlith identified concerns about the potential impacts on watersheds and fish populations (particularly salmon) in the event of a spill.

The Crown is in receipt of an open letter dated June 15, 2016, sent to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal groups, including Neskonlith. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

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

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

### **V - Potential Impacts of the Project on Neskonlith'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 Neskonlith 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 Neskonlith for traditional purposes that could be impacted by the Project.

The general direct and indirect effects of the Project on Aboriginal rights, 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. In consideration of the information available to the Crown from the NEB process, Crown consultation with Neskonlith, Neskonlith'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-to-minor impact on Neskonlith's Aboriginal rights.

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 of this Report, it is the Crown's opinion that the Project is expected to have negligible impacts on Neskonlith's asserted Aboriginal title to the proposed Project area.

Neskonlith expressed concerns regarding spills, and the potential for a spill to impact Neskonlith's use and occupation of its asserted traditional territory, specifically the Fraser River, North Thompson River, South Thompson River and Adams River systems, which are the spawning ground for the largest remaining sockeye salmon run. 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 Neskonlith's Aboriginal Interests, and concerns raised by Neskonlith during the Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Neskonlith'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. The 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 Neskonlith'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 Neskonlith'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 Neskonlith 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 Neskonlith, as discussed in Sections 4 and 5 of the main body of this Report.