

Appendix B.21 – Shuswap Indian Band

I – Background Information

Shuswap Indian Band (Shuswap) is Secwepemc (pronounced “*Shi-HUEP-muh*” or “*She-KWE-pem*”) group, an interior Salish speaking people who traditionally occupied a vast area in the south-central part of British Columbia (BC). Shuswap are understood to correspond to the group identified in the ethnohistoric literature as the Kinbasket (Kenpesq't), an ethnographically Secwepemc people associated with the North Thompson and/or Shuswap Lake people. In the early 1800s, the Kinbaskets split off and by 1846 had settled in the Upper Columbia River area. Although the Kutenai (Kootenay) or Ktunaxa people initially resisted Kinbasket presence, the groups eventually became connected through marriage and community ties.

Shuswap has two reserves (*Shuswap* and *St. Mary's 1A*). Shuswap's registered population as of August 2015 is 264, with 120 members living on reserve.

Shuswap is a party to the Secwepemc Nation *Writ of Summons*, which was filed in BC Supreme Court on March 12, 2007, seeking a declaration of Aboriginal title to the area identified in the writ. The Secwepemc Nation *Writ of Summons* involves: Simpcw First Nation, Adams Lake Indian Band, Bonaparte Indian Band, Kamloops Indian Band, Little Shuswap Indian Band, Neskonlith Indian Band, Shuswap Indian Band, Skeetchestn Indian Band, Splitsin First Nation, and Whispering Pines/Clinton Indian Band.

Shuswap signed a Forest and Range Consultation and Revenue Sharing Agreement with the Province of British Columbia in 2014¹, within which they identify their asserted traditional territory.

II – Preliminary Strength of Claim Assessment

The Project does not overlap Shuswap's asserted traditional territory. The closest location of the Project to Shuswap's asserted traditional territory boundary is approximately 3 kilometres (km) and the right-of-way (RoW) is approximately 280 km from the nearest Shuswap reserve.

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

Shuswap did not participate in the National Energy Board (NEB) hearing process and did not submit an application for funding to the NEB. No correspondence has been received from Shuswap regarding the Project.

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shuswap_fcrsa_executed_oct_1_2014.pdf

The Major Projects Management Office (MPMO) offered Shuswap \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Shuswap an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Shuswap did not use these funding opportunities.

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

IV – Summary of Key Shuswap Issues and Concerns Raised

Lower Nicola wrote to Prime Minister Justin Trudeau, Premier Rachel Notley (Alberta) and Premier Christy Clark on June 10, 2016 on behalf of a collective of Aboriginal leaders, including Shuswap, outlining their general concerns about the Project. Shuswap asserted that the Crown had a duty to consult and obtain free, prior, and informed consent before proceeding with the Project.

In correspondence received July 12, 2016, Shuswap stated that they were unable to participate in capacity funding because of capacity issues.

Accommodation Proposals

In its June 10, 2016 letter, Shuswap requested an indigenous-led independent safety and environmental oversight body as a necessary-but-insufficient condition before securing Shuswap consent.

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 Shuswap 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.

Shuswap's Response to *NEB Recommendation Report*

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

V – Potential Impacts of the Project on Shuswap'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 Shuswap 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 Shuswap for traditional purposes that could be impacted by the Project.

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 Shuswap's traditional territory from the Project area of approximately 3 km reduces the potential for Shuswap'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, 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 Shuswap'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 Shuswap's Aboriginal Interests, and the distance of Shuswap's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Shuswap'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 – Conclusion

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 Shuswap exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on Shuswap would be negligible.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Shuswap'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 Shuswap's Aboriginal Interests, as well as the involvement of Shuswap in emergency response planning activities.