Appendix B.22 – Simpcw First Nation

I – Background Information

Simpcw First Nation (Simpcw) (*pronounced "Simp-qwuh")* is located in the North Thompson, Robson, and Fraser River valleys of British Columbia (BC) and includes the Big Bend of the Columbia River. Simpcw is part of the broader Secwepemc Nation and their traditional language is the western dialect of Secwepemctsin. Simpcw is ethnographically recognized as part of the historical North Thompson Division and was formerly called the North Thompson Indian Band. Simpcw's asserted traditional territory (Simpcw Territory), which they call Simpcwul'ecw, extends northwest of Valemount to include Goat River and Kakwa Park, south of McLure, west to include Bowron Lake Park and east into Jasper National Park, the headwaters of the Athabasca River, parts of the Columbia River Watershed and the portion of Adams Lake that is north of Squaam Bay. There are 715 registered Simpcw members (219 are living on their Reserve, 27 are living on other Reserves, and 468 are living off Reserve). Simpcw has five reserves: Barriere River No. 3A, Boulder Creek No. 5, Louis Creek No.4, Nekalliston No.2, and North Thompson No. 1. The Project's pipeline corridor will run adjacent or directly across the North Thompson River from the Nekalliston No. 2 and the North Thompson No.1 reserves, and in close proximity to the Barriere River No.3A, Boulder Creek No.5, and Louis Creek No.4 reserves. The existing pipeline right-of-way (RoW) transits across the North Thompson River from those reserves. In some cases the distance is less than 1 km from the Reserve.

Prior to European contact, Simpcw people were known for their hunting ability and travelled extensively throughout Simpcw Territory, setting up hunting camps in the high mountains during the summer months and establishing pithouses on the North Thompson, the upper Fraser River, in Wells Gray Park and into Alberta during the winter. Simpcw would use the meat, furs, fish, and plants they harvested for sustenance and to trade with neighboring Secwepemc and non-Secwepemc groups. According to Simpcw's testimony at the NEB Oral Traditional Evidence (A71198) hearings, Simpcw members continue to practice contemporary versions of traditional lifeways throughout Simpcw Territory. Hunting, fishing, and plant gathering remain crucial to their identity, culture, and community.

Simpcw, along with 8 other Secwepemc Nations, filed a protective *Writ of Summons* with the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ.

II – Preliminary Strength of Claim Assessment

- Approximately 289 km of the Project's pipeline and 10 pipeline facilities (Hargreaves Trap Site, Rearguard Station, Albreda Station, Chappel Station, Blue River Station, Finn Station, McMurphy Station, Blackpool Station, Darfield Station and Black Pines Station) would be located within Simpcw's Territory in BC.
- The Crown's preliminary assessment of the Simpcw's claim for Aboriginal rights, over the section of the Project that spans the area from north of Blue River to south of Louis Creek, involves a range of a moderate-to-strong to a strong *prima facie* claim. The strong claims for Aboriginal rights are assessed to occur in the vicinity of Barriere to Finn Creek, which falls within the area ethnographers considered the historic North Thompson division territory and where there are indications for North Thompson division hunting, fishing, gathering and trails around the time of contact. The moderate-to-strong claims of Aboriginal rights occur in the area north of Finn Creek. The area from Finn Creek to north of Blue River is within the area that ethnographers consider to be historic North Thompson division territory, where there is some available historic information regarding resource uses in this area, with indications this vicinity involved

challenging terrain along a historic the trail that followed the North Thompson River between Finn Creek and Tete Jaune Cache.

- The Crown's preliminary assessment of Simpcw's claim for Aboriginal Title over the section of the Project that spans the area from north of Blue River to south of Louis Creek involves a range of a weak to strong *prima facie* claim. The strong claims are assessed to occur in the vicinity of Chu Chua/Barriere along the North Thompson River, where there is information of about 500 North Thompson people centered at Chu chua around 1850, at a historic village. A moderate-to-strong claim occurs in the vicinity of Clearwater; and vicinity of Finn Creek. Most available ethnographers indicate the historic North Thompson division lived in key areas around 1846 that included the North Thompson River north of Heffley Creek to Little Fort, the Clearwater to Vavenby vicinity, the Finn Creek/Avola vicinity and the Tete Jaune Cache vicinity. There are indications of a historic village near Chu chua/Barriere likely occupied at 1846 and a winter centre at Finn Creek/Avola likely utilized for fishing and hunting at 1846. There is limited information regarding other villages such as in the vicinity of Louis Creek, Little Fort, and Clearwater, or whether these were occupied at 1846.

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 Simpcw's Aboriginal Interests, the Crown is of the view that the legal duty to consult Simpcw lies at the deeper end of the *Haida* consultation spectrum. Simpcw was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Simpcw opportunities to be consulted at a deeper level.

Simpcw was actively involved as an intervenor in the National Energy Board (NEB) review process, filing written evidence, filed and responded to information requests, and presenting Oral Traditional Evidence (A4F1C2). Simpcw also responded to Natural Resource Canada's Issues Tracking Table Information Request by further elaborating their concerns (A71198).

Simpcw has also actively engaged in consultations with the Crown, and has sent numerous letters and emails to the Crown outlining their concerns regarding the Project and the Crown's reliance on the NEB process to fulfill, to the extent possible, the duty to consult. Simpcw participated in an early engagement meeting with the Major Projects Management Office (MPMO) on July 21, 2014, and met with the Crown again on May 18, 2016 and November 3, 2016 to discuss the Project.

Simpcw signed a contribution agreement with the NEB for $76,800, plus travel for three to the hearing. The MPMO offered Simpcw $12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Simpcw an additional $14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Simpcw signed contribution agreements with the MPMO in response to both of these offers, for a total of $26,000 in allocated funding. Simpcw was issued $5,000 in capacity funding from EAO on October 14, 2016 to participate in consultation with the Crown.

Simpcw signed a letter of support with the Proponent on May 10, 2016. Simpcw has completed a Mutual Benefits Agreement with the Proponent.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. Simpcw provided comments on the first draft of this Report on October 4, 2016. A second draft of this Report was provided to Aboriginal groups for

review and comment on November 1, 2016. Simpcw did not provided comments on the Report but provided a separate Aboriginal group submission to the Crown on November 16, 2016. Comments in the submission included concerns with the Crown's reliance on the NEB process, the preliminary strength of claim assessment, mischaracterization of impacts, and insufficient consideration of Aboriginal Title and accommodation.

IV – Summary of Key Simpcw Issues and Concerns Raised

As an intervenor in the NEB hearing process, Simpcw provided a significant volume of information, including responses to information requests, filing of written evidence, and presenting Oral Traditional Evidence (A4F1C2). Simpcw has also provided input during the post-NEB hearing Crown consultation process through correspondences and meetings with the Crown, and by providing comments on this Report. This is a summary of the key issues raised by Simpcw, 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. The Crown's understanding of Simpcw's concerns regarding the Project is summarized below:

Methodology, Process and Consultation

Simpcw expressed disagreement that the duty to consult can be adequately discharged through the NEB process or Crown consultation process, and that the NEB process and Crown consultation to date uses a "one size fits all" approach to First Nations consultation which does not take into account the unique characteristics of each Nation and does not constitute a meaningful and responsive two-way dialogue. Simpcw stated that contrary to the Crown's legal duties to do so, the consultation process was not informed by a preliminary assessment of the strength of Simpcw's claim of Aboriginal Title and Rights to the Project area within Simpcw Territory. Simpcw commented that they feel the Crown's strength of claim assessment is too brief, lacking in evidence, and should have been shared with Simpcw earlier on during the consultation process. Simpcw noted the importance in making sure that the strength of claim assessment is accurate, as it is a key component of Simpcw's engagement going forward.

Simpcw noted their deep concerns about timelines and the limited mandate the Crown has to consult on accommodation for impacts on Aboriginal title and rights, particularly financial compensation. Simpcw indicated that Canada is not adequately engaging on a nation-to-nation level unless the Crown responds to the issue of shared decision-making and accommodation.

Environmental Impacts

Simpcw expressed several concerns related to the protection and management of the environment and, that as caretakers and stewards of Simpcw Territory, it is their responsibility to ensure that the environment is appropriately managed and protected. They also expressed concern that clearing of the pipeline right-of-way would destroy plants and that grading, trenching, and construction activities would have a negative impact on wildlife.

Impacts on Aboriginal Rights and Title

Simpcw expressed concern that the Project will have a serious impact on their title lands and their ability to exercise their Aboriginal rights, including impacting their ability to hunt, fish, and gather plants, berries and medicines. Simpcw have stated that they hold Aboriginal title to their Territory and exercise Aboriginal rights throughout, and that the Crown and the proponent must obtain consent from Simpcw before the Project can proceed. Simpcw stated that consent to use their title lands is contingent on being adequately accommodated through a process of Nation-to-Nation discussion.

During consultation, Simpcw identified a number of specific environmental and land use changes that Simpcw need to have addressed, including emergency response preparedness and capacity, parks improvement, community infrastructure, and youth programs.

Simpcw also reaffirmed their position that a Mutual Benefits Agreement with Kinder Morgan does not bear on their concerns regarding impacts on Aboriginal title, and they do not want it to be a surrogate for accommodation.

Accommodation Proposals

In their information request responses and comments on the draft of this Report, Simpcw provided the federal and provincial Crown with proposed accommodation and mitigation measures to consider in relation to accommodating potential impacts of the Project on Simpcw's Aboriginal Interests. Simpcw stated that accommodation measures specific to the Project must include commitments from the Crown to engage in Nation-to-Nation discussions with the goal of reconciliation. Proposed accommodations and mitigations are outlined below:

- Simpcw requires a fully operating Emergency Response Centre to enable Simpcw to respond to any emergency associated with the Project that must involve the proponent, the Province of BC and Canada to ensure that it aligns with provincial/federal standards, is recognized by government, and is fully operational;
- Simpcw seeks emergency response measures for both the Project and the existing pipeline;
- Simpcw believes the model of shared decision-making is required for the Project and that discussions around joint management of their lands and resources are necessary;
- the Province of BC needs to address the boundary changes at the parks;
- Full compensation mechanisms are required to ensure that in the event of a leak or a spill, Simpcw is compensated for any losses;
- Simpcw requires the proponent and the provincial government to recognize and adhere to Simpcw's Cultural Heritage Policy with regard any arch work on Simpcw Territory. Ultimately, before any arch site is disturbed or removed, Simpcw must be notified immediately and Simpcw will determine how to proceed; and
- Simpcw is seeking financial compensation from Canada.

Sections 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 Simpcw 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.

Simpcw's Response to NEB Recommendation Report

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

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

Simpcw conducted an independent, third-party Traditional Land and Resource Use (TLRU) study titled T'7ekmin'-tp re Simpcwul'ecw te xyemstem-kuc "*Through the Heart of Simpcwul'ecw*" that included background research and community interviews with Elders and other knowledge holders. The TLRU study provides information on the subsistence and cultural activities that community members practice within territory. Simpcw community members hunt caribou, moose, mule deer, white-tailed deer, elk, and mountain goat, as well as pick berries, collect plants and roots. Community members also fish for trout, sucker, whitefish, and salmon, among other species. In its Supplemental Technical Report (A3Z4Z2), the proponent estimated approximate distances and directions from the Project's pipeline corridor based on information in Simpcw's TLRU study. Public information on Simpcw was provided in *Volume 5B* (A3S1S0) of the Project Application.

In their comments on the first draft of this Report, Simpcw stated that their members continue to practice contemporary versions of traditional lifeways throughout their territory. Hunting, fishing, and plant gathering remain crucial to [Simpcw] identity, culture, and community".

Impacts on Hunting, Trapping and Plant Gathering

In the Supplemental Report of the Project Application (A3Z4Z2), it was reported that hunted game species that are important to Simpcw within the Project footprint include caribou, moose, mule deer, white-tailed deer, elk, and mountain goat. Community members reported gathering hundreds of different plants species for a variety of uses.

Simpcw identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts on their ability to hunt, and gather plants, berries and medicines, use of pesticides, impacts to wildlife and wildlife habitat, in particular impacts on bears, disturbance of mineral licks, destruction of squirrel caches, and impacts to beaver lodges and dams. 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 (including species at risk) listed species. 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 Simpcw, the proponent would implement several mitigation measures to reduce potential effects to species

important for Simpcw'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 Simpcw to further discuss and address concerns, where possible, prior to the start of construction.

As described in *Volume 5B* of the Project Application, two traditional hunting sites at Avola and the Clearwater River are located within the Project's pipeline corridor. Hunting sites at North Thompson Valley and Tête Jaune Cache are located approximately 1.6 km and 3.7 km, respectively, from the Project's pipeline corridor. Four hunting sites are located more than 17 km from the Project Area. Three traditional trapping sites were identified, of which one site along the waterways from Mount Robson to Yellowhead Pass is located approximately 17 km from the Project's pipeline corridor, and two are located more than 50 km from the Project Area. The traditional plant gathering site at Blue River is within the Project's pipeline corridor, and the site in Jasper is more than 50 km from the Project. During the TLRU study for the Project, Simpcw identified 60 hunting, 31 trapping and 54 plant gathering sites. The site-specific information was not provided in the TLRU study; therefore the approximate distance from the Project Area is not available.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Simpcw's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown appreciates that with construction and reclamation activities disruptions to access may result in a loss of harvesting opportunities for Simpcw. 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). Further, the proponent would implement several mitigation measures to reduce potential effects on 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 Simpcw's traditional lands. The proponent is committed to minimizing the development of access routes, controlling public access along the construction right-of-way, 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 Simpcw prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Simpcw to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Simpcw 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 effects on Aboriginal harvesting practices and subsistence living, as Simpcw members continue to use the lands to gather foods and medicinal plants. Project-related construction and routine maintenance is expected to

cause short-term, temporary disruptions to Simpcw'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 of this Report). 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 Simpcw, Simpcw'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 activities during operation are expected to result in a minor impact on Simpcw'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 Simpcw;
- Project-related pipeline and facility construction and routine maintenance activities within Simpcw's territory are temporary and thus, likely to cause minor disruptions to Simpcw'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 Simpcw regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Simpcw community members fish for a variety of species including, but not limited to, trout, sucker, whitefish, and salmon. As described in *Volume 5B* of the Project Application, two fishing sites at Canoe River and Raft River are located within the Project's pipeline corridor, and the fishing site at Finn Creek is located 809 m from the Project's pipeline corridor. Two fishing sites are located more than 52 km from the Project. During the TLRU study for the Project, Simpcw identified 68 fishing sites. The site-specific information was not provided in the TLRU study; therefore the approximate distance from the Project Area is not known.

Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Simpcw'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 Simpcw 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 (Section 4.3.2 of this Report). As previously discussed, the proponent is committed to minimize disturbance to access to Simpcw's traditional lands, as described in the Access Management Plan. The proponent is committed to working with Simpcw to develop strategies to most effectively communicate the construction schedule and work areas to community members.

As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Simpcw'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 avoid or reduce potential impacts on social, cultural, spiritual or experiential aspects of fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Simpcw, Simpcw'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 Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Simpcw'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 Simpcw;
- Project-related pipeline and facility construction and routine maintenance activities within Simpcw traditional territory are temporary and thus, likely to cause minor disruptions to Simpcw community members accessing traditional fishing 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 freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

In their comments on the first draft of this Report, Simpcw stated that prior to European contact, Simpcw people traveled extensively throughout their territory and established pithouses during the winter on the North Thompson River, the upper Fraser River, in Wells Gray Park and into Alberta.

Simpcw identified concerns related to environmental effects of the Project on other traditional and cultural practices, including the impact of the Project on archaeological artifacts, and sacred or burial sites. 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 Simpcw's traditional and cultural practices (Section 4.3.4). With regards to specific concerns raised by Simpcw, 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 RoW 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.

As described in *Volume 5B* of the Project Application, other traditional and cultural practices identified include three traditional trails and travelways, nine traditional habitation sites, six winter home sites, and one traditional gathering place. The trails and travelways at Canoe River Crossing and the Fraser River are both located within and 1 km northwest of the Project's pipeline corridor. The traditional trail network connecting Snake River, Little Smokey, Goat River, Bowron Lakes and Williams Lake, is located

approximately 21.8 km southwest of the Project Area. Three traditional habitation sites at Swift Creek, Canoe River, and Raft River Crossing are located within the Project's pipeline corridor. The habitation sites at Fraser River and Chu Chua are located within 2 km of the corridor, and Tête Jaune Cache is located approximately 3.7 km west of the Project's pipeline corridor. Three traditional habitation sites are located more than 12 km from the Project Area. Three winter home sites are located within 2 km of the Project's pipeline corridor at Finn Creek, Birch Island and Chu Chua. One site at Tête Jaune is located approximately 3 km northwest of the Project Area and two sites are located more than 7.5 km from the Project Area. During the TLRU study for the Project, Simpcw identified 47 other traditional and cultural practices including 29 trails and travelways, 9 habitation sites, 4 gathering places, and 5 sacred areas. The site-specific information was not provided in the TLRU study; therefore the approximate distance from the Project Area is not known.

Simpcw raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, including potential alteration of Finn Creek Park and North Thompson River Park boundaries. Simpcw is concerned that alteration of these boundaries could affect important cultural sites within that are used by Simpcw to teach youth about their culture. Simpcw is also concerned about the potential loss of access to sacred areas, which could result in a loss of culture and passing on of traditional knowledge to younger generations. 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 Simpcw'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 Simpcw'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). 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 the Project may result in temporary interruptions to Simpcw'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 Simpcw, Simpcw'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 minor impact on Simpcw's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed about, which are summarized as follows:

- Project-related construction and operation activities are likely to have minor to moderate environmental effects on Simpcw's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Simpcw's traditional territory are temporary and thus, likely to cause minor disruptions to Simpcw'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 Simpcw's traditional territory assessed as having strong *prima facia* claim to Aboriginal title in the vicinity of Chu Chua/Barriere along the North Thompson River, where there is information of about 500 North Thompson people centered at Chu Chua around 1850, at a historic village. A moderate-to-strong claim to Aboriginal title is in the vicinity of Clearwater; and vicinity of Finn Creek.

The Crown has actively consulted with Simpcw throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Simpcw throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Simpcw's use of its asserted traditional territory, including access restrictions to resources and disruption of traditional activities resulting from alteration of Finn Creek Park and North Thompson River Park boundaries which could affect important cultural sites within that are used by Simpcw to teach youth about their culture; and
- Potential of the Project to affect Simpcw's ability to manage and make decisions over the Project area.

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 understands that, in addition to NEB conditions that would require the proponent to report on heritage resources and traditional use investigations (NEB Conditions 97 and 100), the proponent has committed to meeting with Simpcw prior to the start of construction to discuss and address concerns, where possible. The Crown notes that Simpcw 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 of this Report, it is the Crown's opinion that the Project is expected to have negligible impacts on Simpcw's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Simpcw expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly the potential for river contamination from pipeline spills or leaks and the impact that such contamination could have on fish, and impacts on human health and safety. Simpcw is also concerned about the impacts of perceived risk such as fear of an accident on Simpcw members.

The Crown also appreciates Simpcw's concerns regarding spills, and the potential for a spill to impact Simpcw's use and occupation of Simpcw territory, ability to make decisions over the area impacted, and

the potential for a spill to adversely impact any economic development aspirations Simpcw 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 Simpcw's Aboriginal Interests and concerns raised by Simpcw during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Simpcw'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 spill[1].

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 Simpcw's Aboriginal Interests would be minor.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Simpcw'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 Simpcw 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 Simpcw, 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 Simpcw in an attempt to offset potential impacts, should the Project proceed.

[1] Trans Mountain Final Argument, p. 85 and 207