

Appendix B.26 - Ts'kw'aylaxw First Nation (Pavilion Indian Band)

I - Background Information

Ts'kw'aylaxw First Nation (Ts'kw'aylaxw) (pronounced “TS-KWHY-lux”), also known as Pavilion Indian Band, is located in the south central interior of British Columbia (BC), approximately 40 kilometres (km) northwest of Lillooet and 70 km west of Cache Creek. The Ts'kw'aylaxw is a Secwepemc (pronounced “Shi-HUEP-muh” or “She-KWE-pem”) (Shuswap) group, historically part of the ethnographic “Bonaparte Division” and over time, through intermarriage, the Ts'kw'aylaxw were absorbed by the St'at'imc (Lillooet) Nations, specifically associated with the Fraser River Band (šłáłimx?úl) of the upper division of the St'at'imc. The Ts'kw'aylaxw are a member of the St'at'imc Chiefs Council.

Ts'kw'aylaxw has eight reserves: Leon Creek no.2 (472.5 hectares [ha]), Leon Creek no.2A (176.4 ha), Marble Canyon no.3 (263.1 ha), Pavilion no.1 (881.2 ha), Pavilion no.1A (16.2 ha), Pavilion no.3A (256.2 ha), Pavilion no.4 (45.3 ha), and Ts'kw'aylaxw no.5 (16.1 ha) but resides on only four of the reserves. Ts'kw'aylaxw has a total registered population of 567 (197 [35%] are living on their reserve, 77 [14%] are living on other reserves, and 293 [52%] are living off reserve). The closest community/reserve is located 85 km away from the pipeline right of way (RoW).

Ts'kw'aylaxw submitted a Statement of Intent (SOI) to the BC Treaty Commission (BCTC) on October 11, 1994. On October 13, 1994, the BCTC accepted the SOI as complete signaling that the process had begun. However, Ts'kw'aylaxw held a referendum which ruled on July 23, 2000, that they would formally withdraw from the BC Treaty Process. Ts'kw'aylaxw is a party to the St'at'imc Nation protective *Writ of Summons* filed with the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the writ. Ts'kw'aylaxw has signed a revenue sharing agreement with the Province of BC in 2014, identifying its asserted traditional territory in the 2014 Forestry Consultation and Revenue Sharing Agreement.¹

The Ts'kw'aylaxw dialect is a mix of St'at'imcets (Lillooet language) and Secwepemc'tsn (Shuswap language). There is limited information available about Ts'kw'aylaxw's unique cultural characteristics as they are not participating in the National Energy Board (NEB) process nor have they engaged in consultations with the Major Projects Management Office (MPMO) outside of the formal NEB process.

II - Preliminary Strength of Claim Assessment

- The Project's RoW does not intersect with either the St'at'imc Nation writ or asserted traditional territory of the Ts'kw'aylaxw.
- There are no indications of Ts'kw'aylaxw territories or uses involving the pipeline RoW; claim areas are approximately 56 km from the RoW.

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tskwaylaxw_fcrsa_executed_1may14.pdf

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

Ts'kw'aylaxw did not participate in the NEB process as either an intervenor or a commenter, and did not submit an application for funding to the NEB, nor did the Lillooet Tribal Council participate.

Ts'kw'aylaxw did not engage in any consultation activity with the MPMO or the Crown outside of the NEB process. Efforts were made to include and inform Ts'kw'aylaxw of the process and opportunities for involvement.

The MPMO offered Ts'kw'aylaxw \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Ts'kw'aylaxw did not use this funding opportunity.

A first draft of this Report was provided to Ts'kw'aylaxw for review and comment on August 17, 2016. The Crown did not receive comments from Ts'kw'aylaxw on the first draft of the 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 Ts'kw'aylaxw.

IV - Summary of Key Ts'kw'aylaxw Issues and Concerns Raised

This section offers a summary of the key issues raised by the Ts'kw'aylaxw, 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 Ts'kw'aylaxw's key Project-related issues and concerns are summarized below:

Ts'kw'aylaxw did not participate in the NEB review process nor engage in outside consultation with the Crown.

Ts'kw'aylaxw's Response to NEB Recommendation Report

Ts'kw'aylaxw did not provide any comments on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Ts'kw'aylaxw's Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is 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.

It is the Crown's understanding that Ts'kw'aylaxw 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 Ts'kw'aylaxw 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 Ts'kw'aylaxw's traditional territory from the Project area of approximately 56 km significantly reduces the potential for Ts'kw'aylaxw'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 Ts'kw'aylaxw, Ts'kw'aylaxw'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 Ts'kw'aylaxw'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 Ts'kw'aylaxw's Aboriginal Interests, concerns raised by Ts'kw'aylaxw during the Crown consultation process, and the distance of Ts'kw'aylaxw's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Ts'kw'aylaxw'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 Ts'kw'aylaxw exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on Ts'kw'aylaxw would be negligible.

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