

Appendix B.29 – Xats’ull First Nation (Soda Creek Indian Band)

I – Background Information

The Xats’ull or Soda Creek Indian Band (Xats’ull) (*pronounced “hat-sull”*) is a Secwepemc Nation (Shuswap people) that is part of the Northern Shuswap Tribal Council (Northern Secwepemc te Qelmucw). Xats’ull is located 35 kilometres (km) north of William’s Lake, British Columbia (BC).

Xats’ull has two reserves: Deep Creek no.2 (1,661.6 hectares [ha]) and Soda Creek no.1 (431.1 ha) and a total of 432 registered members (141 are living on their reserves, 36 are living on other reserves, and 255 are living off reserve).

The bands which make up the Shuswap Nation, known as the people from where the water flowed, claim to have managed large tracts of the Fraser River and the surrounding area and watersheds. Xats’ull consider their ties to the land an important element of their culture, traditional values and customs, and spiritual beliefs which dictate living in harmony with the land.

The Northern Shuswap Tribal Council (Northern Secwe’pemc te Qelmucw Nation) asserts territory in an area west of the North Thompson River to Alexis Creek, and south of McBride to Lillooet. The Northern Secwe’pemc te Qelmucw Nation is in Stage 4 negotiations within the BC Treaty Commission Process and has submitted a Statement of Intent Map to this process. The Northern Secwe’pemc te Qelmucw Nation also 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.

Xats’ull has signed a revenue sharing agreement with the Province of BC in 2015, identifying its asserted stewardship area in the 2015 Forestry Consultation and Revenue Sharing Agreement.¹

II – Preliminary Strength of Claim Assessment

- The pipeline right of way (RoW) follows along the north-eastern and south-eastern edges of the Northern Shuswap Tribal Council asserted territory at Valemound and Clearwater for approximately 42 km, of which 1.2 km is new RoW.
- The Project does not overlap Xats’ull’s asserted traditional territory. The closest location of the pipeline to Xats’ull’s traditional territory boundary is approximately 5.5 km. Xats’ull’s nearest reserve to the RoW is 150 km away.

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 Xats’ull’s Aboriginal Interests, the Crown is of the view that the legal duty to consult Xats’ull lies

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/xatsul_soda_creek_fcrsa_executed_nov_18_2015.pdf

at the low portion of the *Haida* consultation spectrum. In consideration that the Project would not intersect with Xats'ull's asserted traditional territory, Xats'ull was placed on Schedule C of the Section 11 Order issued by the Environmental Assessment Office (EAO).

Xats'ull did not participate in the National Energy Board (NEB) process as either an intervenor or a commentator, and did not submit an application for funding to the NEB, nor did the Northern Shuswap Tribal Council participate. Xats'ull has not engaged in any consultation activity with the Major Projects Management Office (MPMO) or Crown outside of the NEB process. The MPMO offered Xats'ull \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Xats'ull did not use this funding opportunity.

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

IV – Summary of Key Xats'ull Issues and Concerns Raised

Xats'ull has not actively participated in the NEB process and has not engaged in consultation with the Crown.

Xats'ull Response to *NEB Recommendation Report*

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

V – Potential Impacts of the Project on Xats'ull'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 Xats'ull 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 Xats'ull 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 Xats'ull's traditional territory from the Project area of approximately 5.5 km reduces the potential for Xats'ull'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 Xats'ull'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 Xats'ull's Aboriginal Interests, and the distance of Xats'ull's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Xats'ull'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 Xats'ull exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on Xats'ull would be negligible.

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