

## Appendix B.30 – Toosey Indian Band

### I - Background Information

Toosey Indian Band's (Toosey) (*pronounced "two-zee"*) asserted territory is located in south central British Columbia (BC); approximately 40 kilometres (km) south west of William's Lake, BC. Toosey is a member of the Tsilhqot'in National Government as well as the Carrier Chilcotin Tribal Council. Toosey is considered by courts to be a member band of the Tsilhqot'in Nation, an Indigenous people who share a common culture and history and who speak the same proto-Athapaskan language.<sup>1</sup> Other member bands of the Tsilhqot'in Nation include: Xeni Gwet'in Indian Band, Tl'etinqox-t'in Government Office (formerly the Anaham Band), the ?Esdilagh First Nation (formerly the Alexandria Band), the Stone Indian Band (also known as the Yunesit'in), the Alexis Creek Indian Band (also known as the Tsi Del Del or Redstone). Tsilhqot'in Nation filed a protective *Writ of Summons* in BC Supreme Court in 2003, which was revised in 2007 and 2015, asserting Aboriginal title to an area identified in the writ.

Tsilhqot'in Nation, including Toosey, entered into the Tsilhqot'in Stewardship Agreement,<sup>2</sup> with the Province of BC in June 2014, setting out a process of engagement, including consultation on provincial applications within the area identified in the agreement. The parties agreed that environmental assessments of projects remain subject to applicable laws, including the Crown's duty to consult and accommodate. In 2016, Tsilhqot'in Nation and the Province also entered into the Nenquay Deni Accord, setting out a framework to negotiate reconciliation, identifying an area as Tsilhqot'in Territory in a map attached as Schedule A.<sup>3</sup>

Toosey has four reserves: Baptiste Meadow no. 2 (226.6 hectares [ha]), Toosey no.1 (2,339.1 ha), Toosey no.1A (11.8 ha), and Toosey no. 3 (5 ha). There are a total of 340 registered members (144 are living on their reserve, 18 are living on other reserves, and 176 are living off reserve). The closest reserve/community is approximately 150 km from the pipeline right-of-way (RoW).

### II - Preliminary Strength of Claim Assessment

- In correspondence ([A3S0U5](#)) with the proponent, Toosey indicated they will not be engaging further on the Project as there are other, higher priority matters to address, closer to the core territory for their community.
- The Project pipeline RoW does not overlap with the area identified in the Tsilhqot'in Nation writ, nor the agreement area of the Tsilhqot'in Stewardship Agreement or Nenquay Deni Accord.

### 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 Toosey's Aboriginal Interests, the Crown is of the view that the legal duty to consult Toosey lies at the low end of the *Haida* consultation spectrum. In consideration that the Project would not intersect with Toosey's

<sup>1</sup> *William v. British Columbia*, 2012 BCCA 285 at para. 150.

<sup>2</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng\\_sea\\_-\\_2014\\_-\\_unsigned.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng_sea_-_2014_-_unsigned.pdf)

<sup>3</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/nenqay\\_deni\\_accord.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/nenqay_deni_accord.pdf)

asserted traditional territory, Toosey was placed on Schedule C of the Section 11 Order issued by the Environmental Assessment Office (EAO).

Toosey did not participate in the National Energy Board (NEB) process as either an intervenor or a commentor.

Toosey did not engage in any consultation activity with the Major Project Management Office (MPMO) or the Crown outside of the NEB process. However, efforts were made to include and inform Toosey of the process and opportunities for involvement, and they were included on all correspondence regarding the proposed project from the Crown to groups on the Crown list.

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

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

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

This section offers a summary of the key issues raised by the Toosey, 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 Toosey's key Project-related issues and concerns are summarized below.

Toosey did not participate in the NEB review process nor engage in outside consultation with the Crown. The Crown is not aware of any issues or concerns that Toosey may have with the proposed Project.

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

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

#### **V - Potential Impacts of the Project on Toosey'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 Toosey did not participate in the NEB process and did not complete a traditional land and resource use study for the Project. Toosey also indicated, in correspondence with

the proponent, that they would not be engaging further on the Project. As a result, the Crown has limited information on the specific sites and resources used by Toosey 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. In consideration of the information available to the Crown from the NEB process, Toosey'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 Toosey'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 Toosey's Aboriginal Interests, concerns raised by Toosey during the Crown consultation process, and the distance of Toosey's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Toosey'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 Toosey exercises Aboriginal Interests, the Crown expects that under the typical conditions for construction and operations, impacts of the Project on Toosey would be negligible.

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