

Appendix C.13 – Popkum Indian Band

I - Background Information

Popkum Indian Band (Popkum) is a Stó:lō community whose asserted traditional territory encompasses a large section within the Fraser Valley, British Columbia (BC). Popkum is located approximately 30 kilometres (km) west of Hope, BC and 30 km east of Chilliwack, BC, along the Fraser River.

Popkum is understood to be a modern descendant of the group ethnographically identified as the Tait. The Tait are one of several groups classified as Upper Stó:lō. Though similar language and customs appear to have been shared between the Upper Stó:lō groups, the Tait spoke a unique dialect. The Stó:lō historically spoke the Halkomelem language.

Popkum has three reserves: *Pekw'xe:yles (Peckquaylis)*, *Popkum 1*, and *Popkum 2*. Popkum's registered population as of August 2015 is 12, with only one member living on reserve.

Popkum is a party to the Sto:lo Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the *writ*. Popkum is also a party to ongoing treaty negotiations with Canada and BC through the Stó:lō Xwexwilmexw Treaty Association. The Stó:lō Xwexwilmexw Treaty Association is in Stage 4 negotiations within the BC Treaty Commission Process and has submitted a Statement of Intent Map to this process. Popkum signed a Forest and Range Consultation and Revenue Sharing Agreement with the Province of BC in 2014, identifying its asserted traditional territory.¹

As of spring 2016, the proponent advised they had a commercial agreement with Popkum to construct the Project across the following reserve lands: Popkum IR 1 and IR 2. The proponent will be seeking *Indian Act* s.28 (2) permits from Popkum to allow for the expansion of the pipeline. The *Indian Act* tenure will require a Band Council Resolution requesting the tenure be issued. Additionally, the form of agreements and fair market compensation will be considered before the approval of the tenure. The proponent will also be seeking permits from the Department of Indigenous and Northern Affairs Canada (INAC) for a temporary stockpile site proposed on the Popkum reserves.

II - Preliminary Strength of Claim Assessment

- Approximately 92 km of the RoW and two facilities (i.e. Hope Station and Wahleach Station) would be located within Popkum's asserted traditional territory. The Project RoW crosses Popkum reserve No. 1 and Popkum reserve No. 2, both of which are located between Kilometer Posts 1040 – 1050 of the RoW.
- The Crown's preliminary assessment of the Tait's *prima facie* claim for rights over the area of the Project pipeline ranges from weak to strong. The portion that spans the asserted territory falls within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim.²

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

² Stó:lō/Yale Territorial Overlaps: A Preliminary Review of Ethnographic and Historical Sources; Sto:lo First Nations: Traditional Territories of the "Upriver" Halkomelem or "Upper Sto:lo" – Review of Ethnographic and Historical Sources (Nov 18, 2013).

- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope is considered moderate to strong, and the claim is strong for the portion of the Project in proximity to Hope. This is supported by the number of historic Tait village sites scattered from Popkum up through to Ruby Creek on towards Hope, including the historic site of *C'Kals*, a large village site where Hope is now located. The stretch of territory northwest of Hope is considered to be moderate, an area likely utilized for resource gathering activities by those who occupied the Tait villages in and near Hope and northwards.³

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

Popkum participated in the National Energy Board (NEB) review process as an intervenor, independent from the Stó:lō Collective. Popkum's participation in the hearing was limited, as their only filing on the NEB record to date is their Application to Participate. Popkum did not respond to the Major Project Management Office (MPMO)'s Issues Tracking Table Information Request ([A4Q8K8](#)).

Popkum did not submit an application for funding to the NEB. The MPMO offered Popkum \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Popkum an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Popkum did not use these funding opportunities.

On October 12 Popkum accepted \$5,000 in capacity funding from the EAO to assist with the consultation process.

The Crown met with Popkum on October 17, 2016 to discuss the Project, including potential outstanding issues and proposals for accommodation.

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

IV - Summary of Key Popkum Issues and Concerns Raised

The Crown understands that Popkum has provided limited information to the NEB panel reviewing the Project, therefore the summary of key issues and concerns is primarily populated with concerns noted in their initial application to participate in the NEB Report and with information that was raised during Popkum's meeting with the Crown in October 2016.

This section offers a summary of the key issues raised by Popkum, 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

³ Ibid.

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 Popkum's key Project-related issues and concerns are summarized below:

Cultural and Social Impacts:

Popkum identified concerns about disturbance of medicinal plants and traditional food plants on the pipeline RoW.

Methodology, Process and Consultation:

Popkum initially expressed concern that the consultation process does not provide enough time for adequate consultation. However, during their October 17, 2016 meeting with the Crown, noted they were confident in the process of the Project review and have no major concerns regarding the Project.

Environmental Impacts:

Popkum identified concern regarding potential impacts on the Fraser River and the Fraser River bank, such as water quality, impacts on fish and fishing, and protection of wildlife including red tailed hawk nests, riparian areas, and wetlands. In an October 17, 2016, meeting with the Crown consultation team, Chief Murray asked how the NEB would address GHG emissions if there is no mechanism to do so in place.

Health and Human Safety:

Popkum noted concerns regarding exposed pipelines, rockslides, use of toxic herbicide sprays, accidents or malfunctions leading to a release of oil.

Impacts to Aboriginal rights:

Popkum asserts Aboriginal rights and title throughout their traditional territory (including hunting, fishing, and harvesting/medicine gathering rights) and are concerned the Project will have an impact on land, water and sources within their traditional territory. However, Popkum also noted that at this point, they do not believe that the Project moving forward would infringe on Popkum's rights and title.

Accidents and Malfunctions:

Popkum expressed concern regarding spills contaminating water courses, fish and wildlife/harvesting areas. In an October 17, 2016, meeting with the Crown consultation team, Chief Murray expressed interest in developing an emergency plan.

Project Construction Phase:

Popkum identified concerns that cedar trees would be removed during construction, and the effect this could have on traditional and recreational trails in the area. Popkum also expressed concern regarding the displacement of wildlife due to construction.

Popkum's Response to NEB Recommendation Report

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

V - Potential Impacts of the Project on Popkum'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 Popkum's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Popkum'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 specific sites or areas identified as important to of 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 Popkum's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Popkum, Popkum's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province.

Popkum completed a traditional land use (TLU) study for the Project. The report focused on Crown lands within the asserted traditional territory of Popkum crossed by the Project, in the segment of the proposed pipeline from Hope to Burnaby Terminal. Traditional land uses identified by Popkum include hunting deer, gathering plants, information on fishing sites, sacred sites, habitation sites, gathering areas for community members and trails and travelways. Popkum's TLU information is summarized in the Project Application ([A3S1S0](#), [A3S2H1](#)).

In an October 17, 2016 meeting with the Crown consultation team, Chief Murphy emphasized that Popkum is confident in the structure and process of the Project. Although Popkum raised concerns with the Project during the NEB process and Crown consultation process, Chief Murphy stated that the community has no major issues with the Project to date. He noted that, at this point, the Project moving ahead would not infringe on Popkum's rights and title. However, as this is a day by day process, Popkum understands that this could change and is committed to raising any concerns that arise in the future.

Impacts on Hunting, Trapping and Plant Gathering

Popkum identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts on land within their asserted traditional territory, disturbance of medicinal plants and traditional food plants within the RoW, protection of wildlife including red tailed hawk nests, as well as riparian areas, and wetlands, and the displacement of wildlife due to construction.

As described in Popkum's TLU information, community members hunted for ungulate species including elk, moose, white-tail deer and mule deer in upland areas during the late fall and early winter. After the salmon runs were complete, community members would trap beaver, muskrat, rabbit, porcupine, black bear and mountain goat in alpine areas. Migratory birds would be hunted in the fall and early winter. Popkum community members mostly hunt deer, which is an important food source and is also used for making drums. Mountain goats are culturally important to Popkum community members, who are known for making traditional "goat" blankets. During the salmon run in the Fraser River, community

members harvested the shoots of cow parsnip, salmonberry and thimbleberry. During the summer, food plants and berries were harvested in upland areas. Community members would gather in the lowlands once the sockeye salmon runs ended, to collect cranberries and wapato. Wapato potato harvests continue to occur today. Popkum organizes plant harvesting according to a system of land management which restricted the right to harvest to specific families. Plants gathered include traditionally important plants such as huckleberries, salmonberries, stinging nettle, and devil's club.

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, vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including species at risk --listed species). If the Project is approved, NEB conditions 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 Popkum, the proponent would implement several mitigation measures to reduce potential effects to species important for Popkum'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 of wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan and the Wildlife Management Plans.

Five hunting sites were identified by Popkum community members during the TLU study for the Project, none of which are located within the proposed pipeline corridor. One hunting site is located within 2 km of the proposed pipeline corridor, and four are located more than 4 km from the Project. No trapping sites were identified within the proposed pipeline corridor. Popkum community members identified four plant gathering sites during the TLU study for the Project, of which one is located within the proposed pipeline corridor. Three plant gathering sites are located more than 4.5 km from the proposed pipeline corridor.

Popkum raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including impacts to the Fraser River bank. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Popkum'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 Popkum. If the Project is approved, NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites (Section 4.3.1 of this Report). With regards to specific concerns raised by Popkum, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Popkum's hunting, trapping, and plant gathering activities, 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 Popkum's traditional lands. The proponent has 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 has also committed to 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 Popkum prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Popkum to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Popkum 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 the social and cultural impacts associated with the disturbance of medicinal plants and traditional food plants. During the summer, food plants and berries are harvested in upland areas. Popkum organizes plant harvesting according to a system of land management which restricted the right to harvest to specific families. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Popkum's hunting, trapping, and plant gathering activities. This short-term disruption could temporarily alter the behaviour 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. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). With regards to specific concerns raised by Popkum, the proponent would implement several mitigation measures to reduce potential effects to Popkum hunting, trapping, and plant gathering activities. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. The proponent has also committed to ongoing engagement with Aboriginal groups regarding the integration of 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 Popkum, Popkum'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, Project construction and routine maintenance during operation are expected to result in a minor impact on Popkum'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 Popkum;
- Project-related pipeline and facility construction and routine maintenance activities within Popkum's traditional territory are temporary and thus, likely to cause minor disruptions to Popkum'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 Popkum regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

As described in Popkum's TLU information, fishing for salmon has retained its social, cultural and economic importance for Popkum community members. Historically, community members travelled

upstream to fish. Community members now fish closer to the reserve on the banks of the Fraser River. A set-net method is used to fish species such as salmon (sockeye, Chinook, coho and chum), steelhead, and sturgeon. Trout and burbot are also reportedly fished in the Fraser River. Dip nets or gill nets are used to catch fish from rock ledges or fishing platforms in shallower water. Community members fish for sustenance and not for commercial purposes.

Popkum raised concerns with the Project's potential impacts related to environmental effects of the Project on fishing activities, in particular impacts associated with salmon, steelhead, sturgeon, trout and burbot fishing in the Fraser River. Additional environmental concerns were also raised, including impacts on the Fraser River and Fraser River bank, such as water quality, impacts on fish and fishing, and protection of riparian areas and wetlands. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish, fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. If the Project is approved, the NEB Conditions would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Popkum, the proponent would implement several mitigation measures to reduce potential effects to species important for Popkum's fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat.

Popkum identified two fishing sites during the TLU study for the Project, of which one is located within the proposed pipeline corridor on the Fraser River. The second fishing site at Jones Lake is approximate 244 km from the Project. Popkum raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including impacts on the Fraser River and Fraser River bank and impacts on waters within Popkum's asserted traditional territory. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Popkum'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 Popkum 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 important for Popkum (Section 4.3.2 of this Report). With regards to specific concerns raised by Popkum, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Popkum's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Popkum's traditional lands, as described in the Access Management Plan. The proponent committed to working with Popkum to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Popkum 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 the impact on community members who fish for sustenance. Popkum indicated that community members fish for

sustenance and not for commercial purposes. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Popkum's fishing activities. This temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. If the Project is approved, the NEB conditions would either directly or indirectly reduce the potential social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Popkum, Popkum'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-to-moderate impact Popkum'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 Popkum;
- Project-related pipeline and facility construction and routine maintenance activities within Popkum's traditional territory are temporary and thus, likely to cause minor disruptions to Popkum's community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Popkum regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on other Traditional and Cultural Practices

Popkum identified many concerns related to environmental effects of the Project on other traditional and cultural practices, traditional and cultural practices such as trails and travelways, habitation sites, gathering places, and sacred areas are described in Popkum's TLU information.

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. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). With regards to specific concerns raised by Popkum, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Popkum's traditional and cultural practices. The proponent has also 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.

Popkum identified recreational trails and one travelway during the TLU study for the Project. The travelway is located on the Fraser River, approximately 100 m north of the proposed pipeline corridor, and is used by community members to access fishing. No gathering places were identified within the proposed pipeline corridor during the TLU study for the Project. Popkum community members identified two habitation sites during the TLU study for the Project. One habitation site (i.e. pit houses) was identified within the proposed pipeline corridor along the Fraser River. The second habitation site identified was at an unknown location on Blue Ridge Ranch, and once had large, long houses. Three

sacred areas were identified during the TLU study for the Project, none of which are located within the proposed pipeline corridor. The nearest historical sites (archaeological site and cemetery) are approximately 1 km north of the proposed pipeline corridor. Mount Cheam is an important sacred site, approximately 2 km from the Project.

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. Popkum's opportunities for certain traditional and cultural activities would 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 Popkum'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.

Popkum expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including impacts on land and water within their traditional territory and removal of cedar trees during construction, and the effect this could have on traditional and recreational trails in the area. The general direct and indirect effects of the Project on other traditional and cultural practices, along with key mitigation measures, are described in Section 4.3.4 of the main body of this report. As described previously, Project-related activities may result in temporary interruptions to Popkum'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 Popkum, Popkum'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 Popkum's other traditional and cultural practices. 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 Popkum's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Popkum's traditional territory are temporary and thus, likely to cause minor disruptions to Popkum'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 identified by Popkum regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown has actively consulted with Popkum throughout the NEB process and the crown consultation process at a deeper level in an attempt to better identify, understand, and resolve any concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Popkum throughout the NEB process and Crown consultation process include impacts that could impede or disrupt Popkum's use of its

asserted traditional territory, including Project impacts on land and water and an accident or malfunction resulting in a release of oil.

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 notes that Popkum 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, it is the Crown's opinion that the Project is expected to have negligible impacts on Popkum's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Popkum expressed concern with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the potential for accidents or malfunctions that lead to a release of oil.

The Crown understands Popkum's concerns regarding spills, and the potential for a spill to impact Popkum's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Popkum 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 Popkum's Aboriginal Interests and concerns raised by Popkum during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Popkum's Aboriginal Interests. 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. 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 spill⁴.

⁴ Trans Mountain Final Argument, p. 85 and 207

VI - Conclusion

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 Popkum's Aboriginal Interests would be up to minor-to-moderate.

The Crown is supportive of consultation requirements provided by the NEB and the EAO in the various conditions, which would support Popkum's ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Popkum 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 Popkum, 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 Popkum in an attempt to offset potential impacts, should the Project proceed.