

Appendix C.16 - Sts'ailes (Chehalis) Nation

I - Background Information

Sts'ailes Nation (Sts'ailes), also known as Chehalis, is located on the Harrison River in southern British Columbia (BC), with a membership of 1,090 individuals, 479 of whom live on-reserve, as of July 2016. Sts'ailes (pronounced “*Sh-HAY-lis*”) holds two reserves (i.e. Chehalis 5 and Chehalis 6) on the north and south banks of the Harrison River, approximately 10 kilometres (km) north-east of Chilliwack, between the Fraser River and Harrison Lake. Sts'ailes holds a third reserve outside Mission, BC, Pekw'xe:yles, in common with 20 other First Nations of the Fraser Valley region.

A small group of Sts'ailes members speak the traditional language, Hul'q'umi'num'. Sts'ailes is not culturally or politically affiliated with other First Nations, though the Nation does associate with other groups in its operations.

Sts'ailes filed a protective *Writ of Summons* with the BC Supreme Court on December 10, 2013, asserting Aboriginal title to a territory identified in the *writ*. Sts'ailes signed a Forest Consultation and Revenue Sharing Agreement with the Province of BC in 2013, within which Sts'ailes identify as asserted traditional territory.¹

II - Preliminary Strength of Claim Assessment

The Project does not overlap Sts'ailes' asserted traditional territory. The closest location of the Project to Sts'ailes' asserted traditional territory boundary is more than 2 km and the right-of-way (RoW) is approximately 6 km from the Pekw'xe:yles reserve and 14 km from the Chehalis 5 and Chehalis 6 reserves.

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

Sts'ailes did not participate in the National Energy Board (NEB) review of the Project as an intervenor or commentor. As such, they did not put any information directly on the NEB hearing record nor did they submit an application for funding to the NEB. Some information about Sts'ailes was put on the hearing record as part of filings made by the proponent.

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

The Major Projects Management Office (MPMO) offered Sts'ailes \$5,950 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Sts'ailes an additional \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Sts'ailes signed a contribution agreement with the MPMO in response to the first offer, receiving a total of \$5,950 in allocated funding.

Sts'ailes did not receive funding from EAO to support participation in consultations.

Sts'ailes met with the Crown consultation team on March 9, 2016 and September 29, 2016 to discuss the Project, including potential outstanding issues and proposals for accommodation.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) to Sts'ailes for review and comment on August 17, 2016. The Crown did not receive comments from Sts'ailes 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 Sts'ailes.

IV - Summary of Sts'ailes' Key Issues and Concerns Raised

This section offers a summary of the key issues raised by Sts'ailes 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 has gained its understanding of the Sts'ailes Aboriginal issues and concerns through two consultation meetings in 2016 and through the proponent's *Aboriginal Engagement Report (July 2016)*. Because Sts'ailes did not participate in the NEB review, the Crown was unable to use the review process to gain an understanding of the potential impacts of the Project on Sts'ailes. According to the proponent's *Aboriginal Engagement Report (July 2016)*, Sts'ailes has had limited interaction with the proponent. In Sts'ailes' sole meeting with the proponent, Chief Paul noted protection of the Fraser River fisheries was a key concern, but stated no further engagement was necessary. Sts'ailes has since expressed interest in discussing procurement opportunities with the proponent.

During two meetings in March and September 2016 between Sts'ailes and the Crown, Sts'ailes raised several issues and concerns related to the Project:

- Serious impacts to Sts'ailes community members in the event of a spill including impacts to salmon, which is considered the lifeblood of Sts'ailes;
- Potential risks to the watershed resulting from contamination;
- Proximity of the pipeline to the Fraser River and potential impacts to all communities along the River;

- Environmental and cultural impacts from industrial development in Sts'ailes territory, including impacts to fish and impacts to ceremonies that pay respect to fish;
- Access to traditional resources and the lack of available fish; and,
- Proponent accountability and communications.

Sts'ailes' Response to NEB Recommendation Report

No specific comments were received from Sts'ailes on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Sts'ailes' Aboriginal Interests

A discussion of the Crown's approach to assessing Project impacts on Aboriginal Interests is provided in Section 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 Sts'ailes 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 Sts'ailes for traditional purposes that could be impacted by the Project. Sts'ailes identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on Sts'ailes' Aboriginal Interests.

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 Sts'ailes' traditional territory from the Project area reduces the potential for Sts'ailes' 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 Sts'ailes, 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 Sts'ailes' 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 Sts'ailes' Aboriginal Interests, concerns raised by Sts'ailes during the Crown consultation process, and the distance of Sts'ailes' asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in negligible to moderate impacts on Sts'ailes' 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 - 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 Sts'ailes' Aboriginal Interests would be negligible.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Sts'ailes' 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 Sts'ailes 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 Sts'ailes, as discussed in Sections 4 and 5 of the main body of this Report.