

Appendix C.17 – Union Bar First Nation

I - Background Information

Union Bar First Nation (Union Bar) is a Central Coast Salish First Nation located near Hope, British Columbia (BC). It is part of the Stó:lō Nation, but it is not a member of any tribal council. It is an independent band. Union Bar has seven reserves and 123 registered members, most of whom live off reserve.

Union Bar signed a revenue sharing agreement with the Province of BC in 2015, identifying Traditional Territory claimed by Union Bar located within British Columbia as identified by British Columbia in the 2015 Forest Consultation and Revenue Sharing Agreement.¹

Union Bar's past language traditionally was Halq'eméylem, the "Upriver dialect" of Halkomelem, one of the Salishan family of languages of the Coast Salish peoples.

II - Preliminary Strength of Claim Assessment

- Approximately 64 kilometres (km) of the Project right-of-way (RoW) and two facilities (i.e. Hope and Wahleach Stations) would be located within Union Bar's asserted traditional territory.
- Union Bar 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 as between the Upper Stó:lō groups, the Tait spoke a unique dialect.
- 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
- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope, Tait's *prima facie* claim to title 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

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/union_bar_fcrsa_executed_nov_18_2015.pdf

² Cascades Lower Canyon CFA: The Shxw'owhamel, Chawathil, Union Bar and Yale First Nations: A Preliminary Review of Ethnographic and Historical Sources; 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).

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

Union Bar did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB. The Major Projects Management Office (MPMO) offered Union Bar \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Union Bar an additional \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Union Bar did not use these funding opportunities. To date, Union Bar has engaged in limited consultation activity with the Crown.

On August 25, 2014, Union Bar and the proponent executed a confidential Mutual Benefits Agreement. According to the proponent's *Aboriginal Engagement Report* (July 2016), Union Bar filed a Letter of Support with the NEB on October 1, 2014.

On February 22, 2016, the Counsel for Union Bar declined a Phase III meeting, stating that the community was satisfied with their existing Mutual Benefits Agreement.

The Crown provided a first draft of this Report to Union Bar for review and comment on August 17, 2016. Union Bar provided comments on the draft Report to the Crown on September 8, 2016.

A second draft of this Report was provided to Union Bar for review and comment on November 1, 2016. The Crown did not receive comments from Union Bar.

IV - Summary of Union Bar's Key Issues and Concerns Raised

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

The Crown has considered information regarding the proponent's engagement with Union Bar, as described in the proponent's *Aboriginal Engagement Report* (July 2016). Union Bar has provided limited additional information to the Crown and did not participate in the NEB review process.

³ Ibid.

Based on communications between the proponent and Chief A. Alex, the Crown understands Union Bar has raised concerns about archeological resources and sought confirmation that archeological studies are being conducted through provincial parks.

The existing pipeline runs through the Kawakawa Lake Reserve No. 16, in which Union Bar members reside. According to the proponent's Application, Union Bar has requested that the Project avoids Kawakawa Lake Reserve No. 16.

On August 25, 2014, Union Bar and the proponent executed a confidential Mutual Benefits Agreement. According to the proponent's *Aboriginal Engagement Report* (July 2016), and Union Bar filed a Letter of Support with the NEB on October 1, 2014.

It is the Crown's understanding that during its discussions with the proponent, Union Bar expressed interest in potential employment opportunities for its community members.

Sections 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups.

Union Bar's Response to NEB Recommendation Report

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

V - Potential Impacts of the Project on Union Bar'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 or established 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 Union Bar 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 Union Bar for traditional purposes that could be impacted by the Project.

The general direct and indirect effects of the Project on Aboriginal rights, 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, Crown consultation with Union Bar, Union Bar'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 minor impact on Union Bar's Aboriginal rights.

The Crown provides a description of the potential impacts of the Project on asserted 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 or 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 Union Bar 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 on 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 Union Bar's asserted Aboriginal title to the proposed Project area.

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 Union Bar's Aboriginal Interests, and concerns raised by Union Bar during the Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Union Bar'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 - 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 Union Bar's Aboriginal Interests would be up to minor.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Union Bar'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 Union

Bar 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 Union Bar, 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 Union Bar in an attempt to offset potential impacts, should the Project proceed.